

No. 10501

United States
Circuit Court of Appeals

For the Ninth Circuit.

CHARLES GROMER DICKINSON and DORIS
MAY DICKINSON, His Wife; WILLIAM
KEMP; and L. K. FEREVA, Individually
and doing business under the firm name and
style of "FEREVA CHEVROLET COM-
PANY",

Appellants,

vs.

GENERAL ACCIDENT FIRE AND LIFE AS-
SURANCE CORPORATION, LTD.,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,

Northern Division -

FILED

NOV 22 1943

PAUL P. O'BRIEN,

No. 10501

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Standard Oil Bldg.,
San Francisco, Calif.

In the District Court of the United States, In and
For the Northern District of California, Northern
Division.

Equity No. 4287

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD., A Corporation,

Plaintiff,

vs.

CHARLES GROMER DICKINSON, DORIS MAY DICKINSON, WILLIAM KEMP, and L. K. FERREVA, individually and doing business under the firm name and style of FERREVA CHEVROLET COMPANY,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF, ETC.

Plaintiff, General Accident Fire and Life Assurance Corporation, Ltd., brings this suit under and pursuant to the Federal Declaratory Judgment Act, (Judicial Code Section 274-D, 28 U.S.C.A. Section 400) and alleges:

1.

That plaintiff, General Accident Fire and Life Assurance Corporation, Ltd., is now and was at all times herein mentioned a corporation organized and existing under and by virtue of the laws of Scotland, and at all times herein mentioned said

corporation [1*] was and is now engaged in the business of insurance against loss or damage arising out of liability; that said corporation is and was at all the times herein mentioned duly authorized and licensed to do business in the State of California, and having its principal place of business within the State of California in the City and County of San Francisco.

2.

That defendants Charles Gromer Dickinson and Doris May Dickinson are citizens of the State of California, and reside in the City of Chico, County of Butte, in said State;

That defendant William Kemp is a citizen of the State of California, and resides in the Town of Yuba City, County of Sutter, said State;

That defendant L. K. Fereva is a citizen of the State of California, and resides in the City of Lincoln, County of Placer, said State.

3.

That the amount in controversy exclusive of interest and costs exceeds the sum of \$3,000.00.

4.

That this suit is brought under and pursuant to the Federal Declaratory Judgment Act (Judicial Code Section 274-D, 28 U.S.C.A. Section 400.)

*Page numbering appearing at foot of page of original certified Transcript of Record.

5.

That on or about the 6th day of December, 1939, plaintiff issued a policy of automobile insurance to defendant L. K. Fereva; that the policy period was from December 16, 1939, to December 16, 1940, and said policy was in effect during all of said period; that in said policy plaintiff agreed with defendant L. K. Fereva individually and doing business under the firm name and style of [2] Fereva Chevrolet Company, to pay on behalf of said defendant L. K. Fereva, subject to the limits of liability, exclusions, conditions and other terms of said policy, all sums not exceeding \$7,500.00 for each person, and not exceeding \$30,000 for each accident, which said defendant L. K. Fereva should become obliged to pay by reason of the liability imposed upon him by law for damages, including damages for care and loss of services because of bodily injury sustained by any person or persons, caused by accident, and arising out of the ownership, maintenance and use of a certain automobile covered by said policy of automobile insurance, to-wit, a Cadillac Tow Car, Year 1924; that a true copy of said policy is attached hereto and marked Exhibit "A"; that reference is hereby expressly made to said exhibit and the same is hereby made a part hereof.

6.

That on the 25th day of February, 1940, at the hour of approximately 6:15 o'clock A.M. of said day, an accident occurred on U.S. Highway num-

ber 99-E, between the cities of Roseville and Lincoln, Placer County, California, at a point approximately two miles south of the City of Lincoln; that at that time and place defendant L. K. Fereva controlled and was using upon the shoulder of said U. S. Highway number 99-E the automobile tow truck covered by said policy of insurance; that in said accident defendants Charles Gromer Dickinson, Doris May Dickinson and William Kemp received and sustained certain injuries to person and property; that on or about the 26th day of April, 1940, the defendant L. K. Fereva for the first time advised this plaintiff that said accident had occurred, and that an action for damages had been commenced against him by the said Charles Gromer Dickinson and Doris May Dickinson, and that summons and complaint had been served upon him; that until so advised plaintiff had no [3] information that an accident had occurred or that any action had been commenced; that plaintiff alleges that it was released of all obligations and liability under said policy of insurance so far as said accident is concerned by reason of the failure of defendant L. K. Fereva to notify plaintiff that any such accident had occurred until sixty (60) days after said 25th day of February, 1940.

7.

That on or about the 12th day of April, 1940, defendants Doris May Dickinson and Charles Gromer Dickinson commenced an action for damages against defendant L. K. Fereva in the Superior

Court of the State of California, in and for the County of Placer, entitled "Doris May Dickinson and Charles Gromer Dickinson, husband and wife, Plaintiffs, vs. L. K. Fereva, doing business under the firm name and style of 'Fereva Chevrolet Co.', Richard Roe Company, a corporation, Henry Roe Company, a copartnership, John Doe First, John Doe Second and John Doe Third, Defendants, and numbered therein 11844; that a true copy of the complaint in said action is attached hereto and marked Exhibit "B"; that specific reference is hereby made to said Exhibit "B" and the same is hereby made a part hereof.

8.

That on or about the 30th day of November, 1940, defendant William Kemp commenced an action for damages against defendant L. K. Fereva, in the Superior Court of the State of California, in and for the County of Butte, entitled "William Kemp, Plaintiff, vs. K. L. Fereva, individually, and doing business under the firm name and style of Fereva Chevrolet Company, Charles Dickinson, First Doe, Second Doe and Third Doe, a corporation, Defendants", and numbered therein 18256; that a true copy of the complaint in said action is attached hereto and marked Exhibit "C"; that specific reference is hereby made to said Exhibit "C" and the same is hereby made a part hereof.

9.

That said action so brought in the County of Placer by said Doris May Dickinson and Charles Gromer Dickinson came on regularly for trial before the court sitting with a jury; that thereafter and on or about the 6th day of December, 1940, judgment was duly given, made and entered on the verdict of said jury in favor of said Doris May Dickinson and Charles Gromer Dickinson, the plaintiffs therein, and against said L. K. Fereva doing business under the firm name and style of Fereva Chevrolet Co., defendant, in the sum of \$5,000.00, and costs of suit.

10.

That the said action brought in the County of Butte by said defendant William Kemp, plaintiff therein, against said defendant L. K. Fereva, in which said William Kemp seeks damages in the sum of \$7,905.00, and his costs of suit, is still pending therein, and has not yet been brought to trial.

11.

That an actual controversy exists as between plaintiff and the defendants herein, as follows: Defendants Doris May Dickinson and Charles Gromer Dickinson contend that since the automobile referred to in the complaint in said action numbered 11844 is an automobile covered by the said insurance policy, plaintiff herein has an obligation under said policy, it having been adjudged in said action that said Doris May Dickinson and Charles

Gromer Dickinson have judgment against said defendant L. K. Fereva for the sum of \$5,000.00 and costs, to pay the said judgment to the said defendants Doris May Dickinson and Charles Gromer Dickinson;

That defendant William Kemp contends that since the automobile referred to in his said complaint in said action numbered 18256 is covered by said insurance policy plaintiff herein is obliged under [5] said policy to pay to said defendant William Kemp such sum or sums as he may recover as damages in said action against said defendant L. K. Fereva up to the aggregate amount of \$7,500.00;

Defendant L. K. Fereva contends that since said automobile referred to in the complaints in both of said actions is an automobile covered by the terms of said insurance policy, this plaintiff has the obligation under said policy to defend said L. K. Fereva in said actions, and further contends that plaintiff is under obligation to pay, and is liable to pay, any sums recovered, or to be recovered, as damages by said Doris May Dickinson, Charles Gromer Dickinson and William Kemp by reason of the alleged accident set forth in the complaints in said two actions, and that plaintiff herein has the obligation under said policy to pay said sums to said Doris May Dickinson, Charles Gromer Dickinson and William Kemp, up to the aggregate amount recovered, not to exceed \$7,500.00 to each of said three individuals.

On the other hand plaintiff herein denies and controverts said contentions, and each of them, and on its part contends that although the automobile referred to in the said two complaints was covered by said policy of insurance plaintiff herein has no obligations or liability under said policy so far as said alleged accident is concerned, and contends that it was released of all obligations and liability under said policy by reason of the failure of said defendant L. K. Fereva to notify plaintiff that any such accident occurred until sixty (60) days after it is alleged in the said complaints that the same did occur.

12.

That defendant L. K. Fereva has requested plaintiff herein to defend in his name and on his behalf said action brought by Doris May Dickinson and Charles Gromer Dickinson, and the said action brought by William [6] Kemp; that plaintiff herein has defended the first of said actions, subject, however, to an express and complete reservation of all rights of plaintiff, and that plaintiff has consented to defend said action brought by William Kemp, subject, however, to an express and complete reservation of all rights of plaintiff, and has so defended said action hitherto, and is now withdrawing from the defense of said action; that said action is now at issue.

13.

That the continued defense of said action brought by William Kemp in said Superior Court, by plain-

tiff herein will result in loss and damage to plaintiff by reason of the expense that thereby will be incurred by plaintiff; that a declaratory judgment or decree herein determining the rights and other legal relations of the parties hereto is necessary to enable plaintiff herein properly to reach its decision respecting its continued defense of said action in said Superior Court, and to protect plaintiff should it decide not to continue further with said defense, and to avoid the damages and loss that will result to plaintiff by reason of the accrual of expenses incident to the continuation of said defense; that the entry of a declaratory judgment or decree herein is necessary to avoid the loss and damages that will accrue to plaintiff in the event said action in said Superior Court should proceed to decision, and judgment should be entered therein for said William Kemp, since, in such event, unless a declaratory judgment or decree has been entered herein determining plaintiff herein has no liability under any judgment in said action in said Superior Court, plaintiff will be obliged to defend against the claims of defendants Doris May Dickinson, Charles Gromer Dickinson and William Kemp herein that plaintiff is liable to pay said judgments in said Superior Court actions up to the aggregate of \$7,500.00 and costs each. [7]

14.

That plaintiff is informed and believes, and upon such information and belief alleges that unless Doris May Dickinson and Charles Gromer Dick-

inson are enjoined they will undertake to impose upon plaintiff herein liability for the payment of the judgment heretofore rendered in their favor against defendant L. K. Fereva; that unless a preliminary injunction is granted herein restraining the defendants herein, and each of them, and their respective attorneys, until this court enters its final judgment or decree herein, from taking any further proceedings in the said Superior Court actions, and from taking any proceeding for the purpose of imposing any liability upon plaintiff herein based upon the judgment heretofore rendered in favor of Doris May Dickinson and Charles Gromer Dickinson in said Superior Court action in the County of Placer, or based upon any judgment that may be rendered for said William Kemp in said Superior Court action in the County of Butte, plaintiff herein will suffer irreparable loss and damage in that plaintiff herein will be obliged to employ counsel to defend against said claims that plaintiff herein is liable to pay said judgments not to exceed the aggregate amount of \$7,500.00 in favor of each of the individual defendants, and plaintiff herein will have no right to recover the expenses that will be so incurred, or any part thereof; that the granting of such preliminary injunction is necessary to avoid multiplicity of judicial proceedings in that any proceedings to impose liability upon plaintiff herein, based upon any judgment for said Doris May Dickinson and Charles Gromer Dickinson and William Kemp, or either or any of them, will present the same issues and

questions as those presented by this suit for a declaratory judgment or decree; that if such injunction is not granted, and the claims of said defendants herein that plaintiff herein is liable to pay any of such judgments are adjudicated in favor of said claims, [8] any judgment or decree that may be rendered herein for plaintiff herein will be ineffectual.

Wherefore, plaintiff prays:

(a) That defendants, and each of them, be required to answer this bill of complaint in the nature of a petition for declaratory judgment;

(b) That this Court adjudge, decree and declare the rights and legal relations of the parties under and by reason of that certain policy of automobile insurance hereinabove referred to in order that such declaration have the force and effect of a final judgment and decree;

(c) That this Court adjudge and decree that plaintiff herein has no obligation under said policy of automobile insurance to defend said L. K. Fereva in the said actions hereinabove referred to, brought in the Superior Court of the County of Placer, and in the Superior Court of the County of Butte;

(d) That this Court adjudge and decree that plaintiff herein has no liability under said policy of automobile insurance by reason of the alleged accident set forth in the complaint in the said two actions brought in the said Superior Courts of the State of California because of the failure of the

defendant L. K. Fereva to give plaintiff herein any notice of said alleged accident until sixty (60) days after said accident is alleged to have occurred.

(e) That this Court grant a preliminary injunction restraining defendants herein, and each of them, and their respective attorneys, until this Court enters its final judgment or decree herein from taking any further proceedings in said actions in said Superior Courts in and for the County of Butte, and in and for the County of Placer, and from taking any proceedings for the purpose of imposing any liability upon plaintiff herein based upon any judgment that [9] may be rendered in favor of Doris May Dickinson, Charles Gromer Dickinson and William Kemp, or either or any of them in the said two Superior Court actions.

(f) For such other and further relief as to the Court may seem meet in the premises.

MYRICK & DEERING AND
SCOTT

JAMES WALTER SCOTT

Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 7, 1941. [10]

[Printer's Note: Copy of policy attached to complaint is set out in full as Plaintiff's Exhibit No. 1, at page 119 of this printed record.] [11]

[Title of District Court and Cause.]

ANSWER AND CROSS-CLAIM

ANSWER OF CHARLES GROMER DICKINSON, DORIS MAY DICKINSON, AND WILLIAM KEMP

Come now defendants Charles Gromer Dickinson, Doris May Dickinson, and William Kemp, and for answer to the complaint of plaintiff on file herein, admit, Deny, and allege as follows:

I.

Answering the allegations of paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10 and 11, said answering defendants admit the allegations of said paragraphs.

II.

Answering the allegations of paragraph 6 of plaintiff's [24] complaint, defendants admit the allegations of said paragraph from the beginning thereof to and including the words "person and property", in line 24, on page 3 of plaintiff's complaint; answering the remaining allegations of said paragraph 6, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of said allegations and basing their denial upon that ground, Deny, generally and specifically, each, every, and all of the said remaining allegations of said paragraph; and in particular, defendants specifically Deny that said L. K. Fereva on the 26th day of April, 1940, first advised plaintiff of said accident and Deny, that

prior to said date, plaintiff had no information that an accident had occurred and/or any action against said L. K. Fereva had been commenced; and further, specifically Deny that plaintiff was released of all obligations and liability, or any obligations and/or liability, or at all, under said policy of insurance so far as said accident is concerned, by reason of any failure of said L. K. Fereva to notify plaintiff that such accident had occurred.

Upon information and belief, defendants allege that said plaintiff was notified of said accident within 15 days time thereafter by said L. K. Fereva and was further notified within said 15 days time of the imminence of defendants' suit for damages as a result thereof.

III.

Answering the allegations of paragraph 12 of plaintiff's complaint, defendants admit the allegations of said paragraph from the beginning thereof to the words "said actions", in line 1, on page 7 of plaintiff's complaint. Answering the remaining allegations of said paragraph to the end thereof, defendants allege that they are without knowledge or information sufficient to form [25] a belief as to the truth of said allegations and basing their denial upon that ground, Deny, generally and specifically, each, every and all the remaining allegations of said paragraph, excepting, however, that defendant William Kemp admits that plaintiff has consented to defend an action brought by

him against plaintiff. In particular, defendants Charles Gromer Dickinson and Doris May Dickinson specifically Deny that said action brought by them was defended subject to an express and/or any, and/or complete reservation of plaintiff's rights, or subject to any reservation at all, and defendant William Kemp denies that plaintiff's defense of said action brought by him and/or its consent to defend said action is subject to an express and/or any, and/or complete reservation of plaintiff's rights, and/or any reservation at all.

Upon information and belief, all of said defendants allege that the respective actions filed by them against plaintiff have been and now are being defended by plaintiff without express reservation, or any reservation of any kind or character.

IV.

Answering the allegations of paragraphs 13 and 14 of plaintiff's complaint, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of said allegations and basing their denial upon that ground, Deny, generally and specifically, each, every and all of the allegations of said paragraphs, except that defendants Charles Gromer Dickinson and Doris May Dickinson admit that they are undertaking to impose liability on plaintiff for the payment of the judgment heretofore rendered in their favor in the Superior Court of the State of California, in and for the County of Placer, against said L. K. Fereva. [26]

[Title of District Court and Cause.]

CROSS-CLAIM

Come now Charles Gromer Dickinson and Doris May Dickinson, cross-claimants above named, and complaining of cross-defendant for cause of action allege:

I.

Cross-claimants refer to and incorporate paragraphs 1, 3, 5, and 7 of plaintiff's complaint and plead and allege each and every allegation of said paragraphs the same as if they had been pleaded by cross-claimants in the first instance and as if fully set forth herein in detail.

II.

That cross-claimants are residents of the County of Butte, State of California.

III.

That on or about the 7th day of December, 1940, judgment was rendered by the Superior Court of the State of California, in and for the County of Placer, in said action above referred to, and entitled, "Doris May Dickinson and Charles Gromer Dickinson, husband and wife, Plaintiffs, versus L. K. Fereva, doing business under the firm name and style of 'Fereva Chevrolet Company', Defendant", and numbered 11844 in the files of said court, by which judgment it was ordered, adjudged and decreed that the said Doris May Dickinson and Charles Gromer Dickinson, husband and wife, have [27] and recover from the defendant, L. K. Fer-

eva, doing business under the firm name and style of "Fereva Chevrolet Company", the sum of \$5000.00, and costs taxed in the sum of \$215.65, and accruing costs in the sum of \$1.00. That said judgment was rendered after trial by jury in which the jury rendered its verdict in favor of said Doris May Dickinson and Charles Gromer Dickinson, and against said L. K. Fereva, doing business under the firm name and style of "Fereva Chevrolet Company", in the said amount of \$5000.00, together with costs of suit.

IV.

Upon information and belief, cross-claimants allege that the said insured, L. K. Fereva, doing business under the firm name and style of "Fereva Chevrolet Company", promptly notified the General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, cross-defendant herein, of the claim of Doris May Dickinson and Charles Gromer Dickinson, cross-claimants herein, arising out of said collision and that in accordance with the terms of the policy, the said cross-defendant, General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, in fact defended the said action during its entire course of litigation; that further, L. K. Fereva is not in default in any of the terms and conditions of said policy of insurance by him to be performed.

V.

That said judgment entered on the 7th day of December, 1940, as aforesaid, is now a final judg-

ment and that no bond or undertaking has been posted for the payment thereof in proceedings on appeal, or otherwise.

VI.

That there is now due, owing and unpaid under and by [28] virtue of the said judgment, a total sum of \$5,216.65, with interest thereon at the rate of seven (7) per cent per annum, from the 7th day of December, 1940, no part of which has been paid.

VII.

That prior to the filing of the within action said Doris May Dickinson and Charles Gromer Dickinson, husband and wife, made due demand upon the cross-defendant for the payment of the whole of said judgment, with interest and costs thereon; that said cross-defendant, however, failed and refused to pay any part or portion thereof to said cross-claimants, and there is now wholly due, owing and unpaid under and by virtue of the terms of the said policy of indemnity insurance, to cross-claimants herein, the sum of \$5,216.65, together with interest thereon at the rate of seven per cent per annum, from December 7th, 1940, no part of which has been paid.

Wherefore, by reason of the foregoing, defendants Charles Gromer Dickinson, Doris May Dickinson, and William Kemp, and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, pray for judgment against plaintiff and cross-defendant as follows:

1. That this Court adjudge and decree that plaintiff herein was obligated to and did defend the said action hereinabove referred to, brought by Charles Gromer Dickinson and Doris May Dickinson, in the Superior Court of the County of Placer, against said L. K. Fereva, and that said defense was without reservation.

2. That this Court adjudge and decree that plaintiff herein is obligated to defend the said action filed by William Kemp against L. K. Fereva, hereinabove referred to, brought in the Superior Court of the County of Butte, and that said defense be without reservation.

3. That this Court adjudge and decree that plaintiff received the notice of said collision required under the policy [29] of automobile insurance, hereinabove referred to, and that plaintiff is liable under said policy of automobile insurance for any sum or sums of money for which judgment may be given in any action or actions now on file, or which may hereafter be filed, arising out of said collision, within the limits set forth in said policy of automobile insurance.

4. In favor of defendants and cross-claimants, Charles Gromer Dickinson and Doris May Dickinson, and against plaintiff and cross-defendant, in the sum of \$5,216.65, together with interest thereon at the rate of seven per cent per annum from December 7, 1940.

5. For their costs of suit herein.

6. For such other and further relief as to this Court may seem meet and proper, in the premises.

Dated: February 26, 1941.

J. OSCAR GOLDSTEIN

Attorney for defendants and
cross-claimants, Charles
Gromer Dickinson and
Doris May Dickinson.

ERLING S. NORBY

Attorney for defendant, Wil-
liam Kemp. [30]

State of California

County of Butte—ss.

Charles Gromer Dickinson, being first duly sworn,
deposes and says:

I am one of the defendants and cross-claimants
in the above-entitled action, and have read the fore-
going Answer and Cross-Claim and know the con-
tents thereof, and that same is true of my own
knowledge, except as to those matters which are
therein stated on information and belief, and as to
those matters I believe it to be true.

CHARLES GROMER DICKIN-
SON

Affiant.

Subscribed and sworn to before me this 26th day
of February, 1941.

(Seal)

J. OSCAR GOLDSTEIN

Notary Public in and for the
County of Butte, State of
California.

[Endorsed]: Filed Feb. 27, 1941. [31]

[Title of District Court and Cause.]

ANSWER OF L. K. FEREEVA

Comes Now, the above-named defendant, L. K. Fereva, individually and doing business under the firm name and style of Fereva Chevrolet Company, and answering the complaint on file herein, Admits, Denies and Alleges, as follows:

I.

Answering the allegations of Paragraphs I, II, III, IV, V, VII, VIII, IX, X and XI, said answering defendant Admits the allegations of said paragraphs.

II.

Answering the allegations of Paragraph VI of plaintiff's complaint, this answering defendant Admits the allegations of said paragraph from the beginning thereof, to and including the words "person and property", in line 24, on page 3 of plaintiff's complaint; [32]

Denies each and every, all and singular, generally and specially, conjunctively and disjunctively, the remaining allegations of Paragraph VI, and in particular this answering defendant Denies that plaintiff was for the first time advised of said accident or that an action for damages has been commenced against the defendant L. K. Fereva by Charles Gromer Dickinson and Doris May Dickinson, and that summons and complaint had been served upon him, on or about the 26th day of April, 1940, and in this connection this answering defendant alleges that

within fifteen days from the date of said accident, to wit, on the 25th day of February, 1940, this answering defendant notified plaintiff of said accident.

III.

Answering Paragraph XII of plaintiff's complaint, this answering defendant Admits the allegations of said paragraph, save and except that defendant Denies that plaintiff herein defended the action brought by Doris May Dickinson and Charles Gromer Dickinson, subject to an express and/or complete reservation, or any reservation of all and/or any rights of plaintiff.

IV.

Answering the allegations of Paragraphs XIII and IV of plaintiff's complaint, this answering defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of said allegations, and basing his denial upon that ground Denies generally and specifically, each, every and all of the allegations of said paragraphs, save and except that this answering defendant is informed and believes and upon such information and belief alleges that the defendants, Charles Gromer Dickinson and Doris May Dickinson, are undertaking to impose liability on plaintiff for the payment of the judgment heretofore rendered in their favor in the Superior Court of the State of California, in and for the County of Placer, against said L. K. Fereva.

Wherefore, by reason of the foregoing, defendant L. K. Fereva prays for judgment against plaintiff as follows:

1. That this Court adjudge and decree that plaintiff herein was obligated to and did defend the said action hereinabove referred to, brought by Charles Gromer Dickinson and Doris May Dickinson, in the Superior Court of the County of [33] Placer, against said L. K. Fereva, and that said defense was without reservation.

2. That this Court adjudge and decree that plaintiff herein is obligated to defend the said action filed by William Kemp against said L. K. Fereva, hereinabove referred to, brought in the Superior Court of the County of Butte, and that said defense be without reservation.

3. That this Court adjudge and decree that plaintiff received the notice of said collision required under the policy of automobile insurance, hereinabove referred to, and that plaintiff is liable under said policy of automobile insurance for any sum or sums of money for which judgment may be given in any action or actions now on file, or which may hereafter be filed, arising out of said collision, within the limits set forth in said policy of automobile insurance.

4. For his costs of suit herein.

5. For such other and further relief as to this Court may seem meet and proper, in the premises.

Dated: March 1st, 1941.

GEIS & HOGLE

Attorneys for Defendant,

L. K. Fereva. [34]

State of California

County of Glenn—ss.

Milton M. Hogle, being duly sworn on behalf of the defendant L. K. Fereva in the above-entitled action, says: That he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true; that the said defendant is absent from the County of Glenn, where his attorneys have their office, and that the affiant is one of defendant's attorneys, and therefore makes this affidavit.

MILTON M. HOGLE

Subscribed and sworn to before me this 1st day of March, 1941

(Seal)

CARROLL F. BYRD

Notary Public in and for the County of Glenn, State of California.

[Endorsed]: Filed Mar. 3, 1941. [35]

[Title of District Court and Cause.]

ANSWER TO CROSS-CLAIM

Comes now General Accident Fire and Life Assurance Corporation, Ltd. and answers the cross-claim of Charles Gromer Dickinson and Doris May Dickinson herein as follows:—

1.

Denies each and every, all and singular, the allegations contained in paragraph IV thereof, save that this cross-defendant did defend the said action under a reservation of rights.

2.

Answering paragraph VII denies each and every, all and singular, the following allegations therein contained:

“* * * * * and there is now wholly due, owing and unpaid under and by virtue of the terms of said policy of indemnity insurance, to cross-claimants herein, the sum of \$5,216.65, together with interest thereon at the rate of seven per cent per annum, from December 7th, 1940, no part of which has been paid” [36]

3.

Further answering this cross-defendant alleges that it has not information or belief upon the subject sufficient to enable it to answer the allegations contained in paragraph VI of said cross-claim, and placing its denials and each and every thereof upon said ground, cross-defendant denies each and every, all and singular, the allegations contained in said paragraph VI.

Wherefore, this cross-defendant prays that said cross-claimants take nothing by their cross-claim herein.

MYRICK & DEERING AND
SCOTT

JAMES WALTER SCOTT

Attorneys for Cross-Defend-
ant. [37]

State of California

City and County of San Francisco—ss.

W. B. Wentz being first duly sworn, deposes and says:—

That he is one of the General Agents of the General Accident Fire and Life Assurance Corporation, Ltd., a corporation, the cross-defendant named in the above entitled action, and as such is authorized to verify the foregoing Answer To Cross-Claim; that he has read the said Answer and knows the contents thereof; that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to such matters he believes it to be true.

W. B. WENTZ

Subscribed and sworn to before me this 7th day of March, 1941.

(Seal)

AGNES M. COLE

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires October 18, 1942

[Endorsed]: Filed Mar. 8, 1941. [38]

In the District Court of the United States, Northern
District of California, Northern Division.

Equity No. 4287-L

GENERAL ACCIDENT FIRE AND LIFE AS-
SURANCE CORPORATION, LTD., a cor-
poration,

Plaintiff,

vs.

CHARLES GROMER DICKINSON et al.

Defendants.

CHARLES GROMER DICKINSON, and DORIS
MAY DICKINSON, husband and wife,

Cross-Claimants,

vs.

GENERAL ACCIDENT FIRE AND LIFE AS-
SURANCE CORPORATION, LTD., OF
PERTH, SCOTLAND, a Corporation,
Cross-Defendant.

AMENDMENT TO ANSWER OF DEFEND-
ANTS CHARLES GROMER DICKINSON,
DORIS MAY DICKINSON AND WILLIAM
KEMP

Come now the defendants above named, Charles
Gromer Dickinson, Doris May Dickinson and Wil-
liam Kemp, and by leave of court first had and
obtained, file this their amendment to [39] their
answer in the above entitled court and cause.

Said defendants add the following to their answer heretofore filed in the above entitled court and cause and to follow paragraph IV of their answer on page 3 as heretofore filed:

As and for an Affirmative, Separate and Distinct Defense to Plaintiff's Cause of Action, Said Defendants Allege as Follows:

I.

Upon information and belief said defendants allege:

That at all the times mentioned in the complaint of plaintiff and on the 25th day of February, 1940, and for many years prior thereto, the defendant L. K. Fereva was a general insurance agent for the plaintiff, General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, and that particularly on the first day of July, 1937, said plaintiff filed with the Insurance Commissioner of the State of California a notice of the appointment of said L. K. Fereva to act as its agent within the State of California until his license shall be denied, revoked or suspended, and that on said appointment there was issued by the Insurance Commissioner of the State of California to said L. K. Fereva an insurance agent's license, which authorized said L. K. Fereva to act as an insurance agent for plaintiff in the County of Placer and to solicit, negotiate or effect contracts of insurance (except life and inter-insurance) on behalf of plaintiff; that particularly for the fiscal year commencing July 1, 1939 and ending July 1, 1940, said L. K. Fereva was granted

license No. 10513 by the Insurance Commissioner of the State of California; that on said appointment said L. K. Fereva yearly, commencing July 1, 1937 up to and including July 1, 1940 and ending with the fiscal year 1941, received his license from said insurance commissioner and acted as one of the general agents for said company in said County of Placer; [40] that during all of said period of time and for about five years prior to said July 1, 1937, said defendant L. K. Fereva solicited, negotiated and effected, issued and caused to be issued as a general agent for said plaintiff numerous policies or contracts of insurance, acting in concert with and by and through Wentz & Erlin, the attorneys in fact for said plaintiff corporation in the State of California, who at all times herein mentioned have their principal place of business at 206 Sansome, San Francisco, California, and that said policies of insurance thus contracted for and effected in behalf of plaintiff corporation by said L. K. Fereva included fire and theft, public liability, collision, property damages, comprehensive insurance and other kindred policies; that during the period of time herein mentioned said L. K. Fereva contracted for and effected in behalf of plaintiff corporation hundreds of policies of insurance of all types with said plaintiff corporation, by and through Wentz & Erlin, its attorneys in fact, and from time to time was paid and received the regular stipulated commissions for the obtaining of said business and acting as a general agent for said plaintiff corporation

in the County of Placer in connection with said policies and contracts of insurance.

II.

That specifically from and after the said first day of July, 1937, said defendant L. K. Fereva was called upon to and did, in connection with his duties as agent for said plaintiff, report to said plaintiff company any and all accidents or loss or liability arising under any such policies issued by said plaintiff to him, or through him, as its agent and representative thereof by giving oral notice to said Wentz & Erlin at its agency office in Sacramento or San Francisco; that it was not the practice or custom of said defendant L. K. Fereva, nor of said company, as far as said L. K. Fereva [41] was concerned, to have said L. K. Fereva send in any written notices as agent for said company, but that all such notices of any liability or loss or any claim arising under any of the policies or contracts of indemnity insurance, collision insurance, public liability insurance, fire or theft or otherwise were all made by oral notices given by said L. K. Fereva to said Wentz & Erlin, and thereafter the same was always duly acted upon by said Plaintiff corporation by and through their said attorneys in fact, Wentz & Erlin, who directly represented said plaintiff under a power of attorney in the State of California; that on numerous occasions up to and including the first day of July, 1941, that was the accepted, customary and followed practice, mode and system of giving notice of any accident or loss to said plaintiff

corporation by said L. K. Fereva of any accident or any loss sustained by said L. K. Fereva, or others reporting to him, as agent for said plaintiff corporation, under any policy of insurance issued by the plaintiff corporation to said L. K. Fereva individually or through him to third persons as plaintiff's agent and representative.

III.

That for many years prior to the 25th day of April, 1940, in the event of any report of an accident or claim for loss or indemnity on any of the contracts of insurance issued by plaintiff to, or through, said defendant L. K. Fereva as its agent, said defendant L. K. Fereva orally notified said plaintiff corporation by notice given to one R. F. Urquhart, District Representative of the plaintiff corporation, and who was employed as such and directly represented Wentz & Erlin, and who maintained his headquarters in the branch office of said Wentz & Erlin in the City of Sacramento, State of California; that on such occasions, in the event of any accident or loss arising under any policy of insurance issued to, or written by, or through, [42] said L. K. Fereva, said L. K. Fereva gave oral notice to said R. F. Urquhart of the happening of such accident or loss arising, and thereupon the same was duly recognized by plaintiff as a sufficient notice and compliance with the terms of the policies of insurance requiring written notice to be given, and that the same became and was the accepted mode, system and custom of giving notice of claims

or of accidents, or of any loss as between said plaintiff corporation and said defendant L. K. Fereva on any policies of insurance issued to, or written by or through him; that for the period of time herein mentioned said plaintiff corporation allowed and permitted said R. F. Urquhart to hold himself out to said defendant L. K. Fereva as the person to whom such oral notice of any accident or loss on any policies of insurance issued to said L. K. Fereva, or others by and through him, was to be given and that for a period of about ten years prior to the 15th day of March, 1940, that condition continued and was consistently followed by said defendant L. K. Fereva in the place and stead of any written notice, and particularly in the cases of indemnity insurance policies as to public liability, property damage or collision insurance, that was the manner and form in which said defendant L. K. Fereva gave notice under condition 7 of said policy of any accident or loss arising thereunder and, accordingly, these defendants allege that said plaintiff corporation is now estopped to deny said authority of said R. F. Urquhart to receive such notice of any loss from L. K. Fereva orally and from asserting or claiming as a defense as against said defendant L. K. Fereva or these defendants that notice of loss in connection with the accident referred to in plaintiff's complaint was not given in writing.

IV.

That on the 16th day of December, 1939, the policy of [43] insurance set out in the complaint of

plaintiff became effective as to said defendant L. K. Fereva, doing business as Fereva Chevrolet Company, and was in full force and effect until December 16, 1940; that the accident referred to in plaintiff's complaint in which defendants herein were injured occurred on February 25, 1940; that thereafter and within a period of about fifteen days, said defendant L. K. Fereva, following the accepted and usual mode, custom and procedure of notice to be given to plaintiff corporation, orally notified said R. F. Urquhart of the happening of said accident referred to in plaintiff's complaint, and did not render any written notice, or file any written notice with plaintiff corporation by reason of his reliance on the previous practice, mode, conduct, attitude and relationship existing between said plaintiff and himself in reference to insurance policies issued by plaintiff to, or through, the agency of said L. K. Fereva, and which in case of accident or loss were reported to the plaintiff corporation orally by and through said R. F. Urquhart, District Representative of said Wentz & Erlin, attorneys in fact of said plaintiff corporation as above fully set forth.

V.

Defendants further allege that at the time of said accident, to wit, on the 25th day of February, 1940, said L. K. Fereva was the general agent of plaintiff in connection with the contract of liability insurance issued by it, effective as of December 16, 1939, and that in all respects all of his actions and conduct subsequent to said accident, including the oral

notice given by him to said R. F. Urquhart and Wentz & Erlin, were so done by him pursuant to his status as a general agent for said company and in line with his general authority and accepted practice, mode and custom in connection with notice of any accident or loss to be given said plaintiff [44] company in the event of accident or loss under any policies of insurance issued by plaintiff to or written by said L. K. Fereva, as its agent, servant and employee.

VI.

That said defendant L. K. Fereva,, by reason of the facts and circumstances hereinabove set forth, fully complied with the requirements set up and considered the general practice, mode and custom of the plaintiff corporation in giving notice of any accident or injury, and within fifteen days after the 25th day of February, 1940, gave such notice orally to said R. F. Urquhart, District Representative of plaintiff corporation, who was apprised of the happening of said accident and who was under a duty and obligation forthwith to act thereon as he had done in similar instances for many years prior thereto in behalf of said plaintiff corporation.

VII.

That by reason of all of the foregoing facts and circumstances herein alleged, said plaintiff waived the provision contained in paragraph 7 of the insurance contract in question requiring that written notice be given by or on behalf of the insured to the corporation or any of its authorized agents as soon

as practicable, and that as far as these defendants are concerned all of the provisions of said paragraph 7 of the policy of insurance were duly waived by said plaintiff corporation, and moreover by reason of the facts and circumstances herein set forth, so far as these defendants are concerned, said plaintiff corporation is estopped from claiming any benefit by or through the provisions pertaining to written notice of accident required to be given and as referred to in condition 7 of said contract of indemnity insurance and estopped from setting the same up as a defense to the rights of these defendants herein, if any they have, under the terms of said [45] contract of indemnity insurance referred to in plaintiff's complaint and marked Exhibit "A".

Wherefore, said defendants pray that said complaint of plaintiff be dismissed and that it take nothing by its said complaint and that the preliminary injunction heretofore granted by the above entitled court be dissolved and that these answering defendants recover their costs of suit herein.

Dated: December 22, 1941.

J. OSCAR GOLDSTEIN

BURTON J. GOLDSTEIN

Attorneys for defendants

Charles Gromer Dickinson
and Doris May Dickinson.

ERLING S. NORBY

Attorney for defendant

William Kemp. [46]

State of California,
County of Sacramento.—ss.

Charles Gromer Dickinson, being first duly sworn,
deposes and says:

I am one of the defendants in the above-entitled action and have read the foregoing Amendment to Answer of Defendants Charles Gromer Dickinson, Doris May Dickinson and William Kemp, and know the contents thereof, and that the same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe it to be true.

CHARLES GROMER DICKIN-
SON

Subscribed and sworn to before me this 22nd day
of December, 1941.

(Seal) ADELIA C. McCABE
Notary Public in and for the County of Sacramento,
State of California.

[Endorsed]: Filed Dec. 22, 1941. [47]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Monday the 29th day of December, in the year of our Lord one thousand nine hundred and 41.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

ORDER TO PREPARE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND JUDGMENT

The parties hereto and the jury heretofore impaneled herein being present as heretofore, the further trial of this case was thereupon resumed. The plaintiff rested. Thereupon the evidence was closed. Mr. Goldstein made a motion to set aside the order of submission and to reopen the case for further testimony, and after hearing the attorneys, it is Ordered that the motion be and the same is hereby denied. After argument by the Attorneys, and the instructions of the Court to the Jury, the Jury retired at 2:50 o'clock p.m. to deliberate upon its verdict. At 4:14 o'clock p.m. the Jury returned into Court and thereupon returned the following verdicts, which were Ordered recorded, viz:

"We the Jury in the above entitled action, find in favor of the defendants William Kemp and L. K. Fereva, individually, and doing business under the firm name and style of 'Fereva Chevrolet Company'.

HARRY A. ARMSTRONG,
Foreman."

"We, the Jury in the above entitled action, find in favor of defendants Charles Gromer Dickinson and Doris May Dickinson, and against the plaintiff General Accident Fire and

Life Assurance Corporation, Ltd., a corporation, and on the Cross-Complaint of said Defendants and Cross-Claimants Charles Gromer Dickinson and Doris May Dickinson, as husband and wife, we find in their favor and against the Plaintiff and Cross-Defendant General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, a corporation, in the sum of Five Thousand Two Hundred and Sixty-one Dollars and Sixty Five Cents (\$5,261.65), with interest thereon at the rate of Seven Per Cent (7%) per annum from December 7, 1940, until paid.

Dated: December 29, 1941.

HARRY A. ARMSTRONG,
Foreman," [53]

and the jurors upon being asked if said verdicts, as recorded was the verdict of the Jury, each replied that it was. Ordered that the Jury be excused from the further consideration hereof, and that they be excused until January 6, 1942. On motion of Mr. Goldstein, and with the consent of Mr. Scott, it is Ordered that findings of fact and conclusions of law and judgment be prepared by Mr. Goldstein, copies of said documents to be served upon Mr. Scott, and the originals lodged with the Clerk of the Court. Mr. Scott to thereupon have 5 days thereafter to file any proposed amendments to the proposed findings and judgment, the same to thereafter be settled by the Court. Mr. Scott then made a motion for a stay of execution until 10 days after determination of the motion for a new trial. [54]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Thursday the 24th day of September, in the year of our Lord one thousand nine hundred and 42.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

ORDER ENTERING JUDGMENT IN FAVOR
OF PLAINTIFF AND CROSS-DEFENDANT

This case having been heretofore tried before a jury, and the jury having returned a verdict herein, said verdict being purely advisory, and the Court being of the opinion that the verdict should not be adopted as the judgment of this Court, and findings of fact and conclusions of law having been duly submitted, signed and filed, it is Ordered that judgment be entered herein in favor of the plaintiff and cross-defendant, and against the defendants and cross-complainants as prayed for in the Complaint.

[55]

[Title of District Court and Cause.]

VERDICT OF JURY

We, the Jury in the above entitled action, find in favor of defendants Charles Gromer Dickinson and Doris May Dickinson, and against the plaintiff General Accident Fire and Life Assurance Corporation, Ltd., a corporation, and on the Cross-Complaint of said Defendants and Cross-Claimants Charles Gromer Dickinson and Doris May Dickinson, as husband and wife, we find in their favor and against the Plaintiff and Cross-Defendant General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, A Corporation, in the sum of Five Thousand Two Hundred and Sixty-One Dollars and Sixty-Five Cents (\$5,261.65), with interest thereon at the rate of Seven Per Cent (7%) per annum from December 7, 1940 until paid.

Dated: December 29th, 1941.

HARRY A. ARMSTRONG,
Foreman.

[Endorsed]: Filed Dec. 29, 1941. [56]

In the Northern Division of the United States District Court for the Northern District of California

No. 4287-L

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD., a corporation,

Plaintiff,

vs.

CHARLES GROMER DICKINSON, DORIS MAY DICKINSON, WILLIAM KEMP, and L. K. FERREVA, individually, and doing business under the firm name and style of "FERREVA CHEVROLET COMPANY",

Defendants.

VERDICT OF JURY

We, the Jury in the above entitled action, find in favor of the defendants William Kemp and L. K. Fereva, individually, and doing business under the firm name and style of "Fereva Chevrolet Company".

Dated: December 29th, 1941.

HARRY A. ARMSTRONG,
Foreman.

[Endorsed]: Filed Dec. 29, 1941. [57]

In the Northern Division of the United States District Court for the Northern District of California

No. 4287-L

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD., a corporation,

Plaintiff,

vs.

CHARLES GROMER DICKINSON, et al.,
Defendants.

CHARLES GROMER DICKINSON AND DORIS MAY DICKINSON, husband and wife,
Cross-claimants,

vs.

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND, a corporation,
Cross-Defendant.

NOTICE OF FILING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

To: Myrich & Deering and Scott, by James Walter Scott, Esq., Attorneys for plaintiff and Cross-Defendant above named.

You and each of you will please take notice, and notice is hereby served upon you, that there has this day been filed with the Clerk of the court

above named, the Findings of Fact and conclusions of Law and Judgment in the above entitled action for signing by Honorable Martin I. Welsh, Judge of the United States District Court, before whom the above entitled action was tried with a jury. [58]

Copies of said Findings of Fact and Conclusions of Law and Judgment are herewith served upon you with this notice.

Dated: January 7, 1942.

J. OSCAR GOLDSTEIN,
BURTON J. GOLDSTEIN,
EMMETT J. SEAWELL,

Attorneys for Defendants and
Cross - Claimants, Charles
Gromer Dickinson, and
Doris May Dickinson, hus-
band and wife.

GEIS & HOGLE,

Attorneys for Defendant L.
K. Fereva.

ERLING S. NORBY,

Attorney for Defendant Wil-
liam Kemp.

[Endorsed]: Filed Jan. 8, 1942. [59]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

Be It Remembered that the above entitled action came on regularly for trial before the Honorable Martin I. Welsh, Judge of the above entitled court, and a jury sworn to try the issues in the above cause, and which proceeded to trial on the 8th, 11th, 22nd, 26th and 29th days of December, 1941, on the complaint of the plaintiff for declaratory relief, etc., [60] and the answer and amendment to the answer of the defendants Charles Gromer Dickinson, Doris May Dickinson, William Kemp, and L. K. Fereva, individually, and doing business under the firm name and style of "Fereva Chevrolet Company", and also on the cross-claim of defendants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, against the plaintiff above named, and the answer of said plaintiff and cross-defendant to the said cross-claim of said defendants.

Myrick, Deering and Scott, by James Walter Scott, Esq., appeared as attorneys for plaintiff and cross-defendant above named; J. Oscar Goldstein, Esq., Burton J. Goldstein, Esq., and Emmett J. Seawell, Esq., appeared as attorneys for defendants and cross-claimants, Charles Gromer Dickinson and Doris May Dickinson, husband and wife; Geis & Hogle, Esqs., by Milton M. Hogle, Esq., appeared as attorney for defendant L. K. Fereva, individually, and doing business under the firm

name and style of "Fereva Chevrolet Company"; Erling S. Norby, Esq., appeared as attorney for defendant William Kemp.

Evidence both oral and documentary was offered and received on behalf of plaintiff and on behalf of said defendants and cross-claimants, and the case was argued to the court and jury, after which the jury by unanimous vote rendered the following two verdicts:

(1) We, the Jury in the above entitled action, find in favor of defendants Charles Gromer Dickinson and Doris May Dickinson, and against the plaintiff General Accident Fire and Life Assurance Corporation, Ltd., a corporation, and on the Cross-Complaint of said Defendants and Cross-Claimants Charles Gromer Dickinson and Doris May Dickinson, as husband and wife, we find in their favor and against the Plaintiff and Cross-Defendant General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, A Corporation, in the sum of Five Thousand Two Hundred and Sixty-One Dollars and Sixty-Five Cents (\$5,261.65), with interest thereon at the rate of Seven Per Cent (7%) per annum from December 7, 1940, until paid.

(2) We, the Jury in the above entitled action, find in favor of the defendants William Kemp and L. K. Fereva, individually, and doing business under the firm name and style of "Fereva Chevrolet Company". [61]

Now, Therefore, by virtue of the premises, the Court hereby adopts the verdicts as rendered by the Jury in the above entitled court and cause as set

out hereinabove, and which were duly recorded by the clerk of the court as the verdicts of the jury, and now makes its findings of fact and conclusions of law, to wit:

I.

That plaintiff, General Accident Fire and Life Assurance Corporation, Ltd., brings this suit under and pursuant to the Federal Declaratory Judgment Act, (Judicial Code Section 274-D, 28 U. S. C. A. Section 400) and alleges:

II.

That plaintiff, General Accident Fire and Life Assurance Corporation, Ltd., is now and was at all times herein mentioned a corporation organized and existing under and by virtue of the laws of Scotland, and at all times herein mentioned said corporation was and is now engaged in the business of insurance against loss or damage arising out of liability; that said corporation is and was at all the times herein mentioned duly authorized, and licensed to do business in the State of California, and having its principal place of business within the State of California in the City and County of San Francisco.

III.

That defendants Charles Gromer Dickinson and Doris May Dickinson are citizens of the State of California, and reside in the city of Chico, County of Butte, in said State;

That defendant William Kemp is a citizen of the State of California, and resides in the Town of Yuba City, County of Sutter, said State;

That defendant L. K. Fereva is a citizen of the State of California, and resides in the City of Lincoln, County of Placer, said State.

IV.

That the amount in controversy exclusive of interest and costs exceeds the sum of \$3,000.00. [62]

V.

That this suit is brought under and pursuant to the Federal Declaratory Judgment Act (Judicial Code Section 274-D 28 U.S.C.A. Section 400).

VI.

That on or about the 6th day of December, 1939, plaintiff, issued a policy of automobile insurance to defendant L. K. Fereva; that the policy period was from December 16, 1939, to December 16, 1940, and said policy was in effect during all of said period; that in said policy plaintiff agreed with defendant L. K. Fereva individually and doing business under the firm name and style of Fereva Chevrolet Company, to pay on behalf of said defendant L. K. Fereva, subject to the limits of liability, exclusions, conditions and other terms of said policy, all sums not exceeding \$7,500.00 for each person, and not exceeding \$30,000.00 for each accident, which said defendant L. K. Fereva should become obliged to pay by reason of the liability imposed upon him by law for damages, including damages for care and loss of services because of bodily injury sustained by any person or persons, caused by accident, and arising out of the ownership, maintenance and use of a cer-

tain automobile covered by said policy of automobile insurance, to wit, a Cadillac Tow Car, Year 1924; that a true copy of said policy of insurance is attached to the complaint of plaintiff and marked "Exhibit A", to which reference is hereby expressly made, and the said "Exhibit A" is hereby made a part of this finding as if there fully set forth in detail.

VII.

That on the 25th day of February, 1940, at the hour of approximately 6:15 o'clock A.M. of said day, an accident occurred on U. S. Highway number 99-E, between the cities of Roseville and Lincoln, Placer County, California, at a point approximately two miles south of the City of Lincoln; that at that time and place defendant L. K. Fereva controlled and was using upon the shoulder of said U.S. Highway number 99-E the automobile tow truck covered by said policy of insurance; that in said [63] accident defendants Charles Gromer Dickinson, Doris May Dickinson and William Kemp received and sustained certain injuries to person and property; that on the 26th day of April, 1940, the defendant L. K. Fereva, on the request and suggestion of one Walter Henretty, an agent and employee of plaintiff, signed a written notice of accident prepared by said Walter Henretty to Plaintiff herein, advising plaintiff that said accident had occurred, and further advising plaintiff that an action for damages had been commenced against him by the said Charles Gromer Dickinson and Doris May Dickinson, And delivered to him the

summons and complaint which had been served upon him.

VIII.

That on or about the 12th day of April, 1940, defendants Doris May Dickinson and Charles Gromer Dickinson commenced an action for damages against defendant L. K. Fereva in the Superior Court of the State of California, in and for the County of Placer, entitled "Doris May Dickinson and Charles Gromer Dickinson, husband and wife, Plaintiffs, vs. L. K. Fereva, doing business under the firm name and style of "Fereva Chevrolet Co.", Richard Roe Company, a corporation, Henry Roe Company, a copartnership, John Doe First, John Doe Second and John Doe Third, Defendants, and numbered therein 11844; that a true copy of the complaint in said action is attached to the complaint of plaintiff and marked "Exhibit B" is hereby made a part of this finding as if here fully set forth in detail.

That on or about the 30th day of November, 1940, defendant William Kemp commenced an action for damages against defendant L. K. Fereva, in the Superior Court of the State of California, in and for the County of Butte, entitled "William Kemp, Plaintiff, vs. L. K. Fereva, individually, and doing business under the firm name and style of Fereva Chevrolet Company, Charles Dickinson, First Doe, Second Doe and Third Doe, a corporation, Defendants", and numbered therein 18256; that a true copy of the complaint in said action is attached to the complaint of plaintiff and marked "Exhibit

C", to which [64] reference is hereby expressly made, and the said "Exhibit C", is hereby made a part of this finding as if here fully set forth in detail.

X.

That said action so brought in the County of Placer by said Doris May Dickinson and Charles Gromer Dickinson came on regularly for trial before the court sitting with a jury; that thereafter and on or about the 6th day of December, 1940, judgment was duly given, made and entered on the verdict of said jury in favor of said Doris May Dickinson and Charles Gromer Dickinson, the plaintiffs therein, and against said defendant L. K. Fereva, in which said William Kemp seeks damage in the sum of \$7,905.00, and his costs of suit, is still pending therein, and has not yet been brought to trial.

XII.

That an actual controversy exists as between plaintiff and the defendants herein, as follows: Defendants Doris May Dickinson and Charles Gromer Dickinson contend that since the automobile referred to in the complaint in said action numbered 11844 is an automobile covered by the said insurance Policy, plaintiff herein has an obligation under said policy, it having been adjudged in said action that said Doris May Dickinson and Charles Gromer Dickinson have judgment against said defendant L. K. Fereva for the sum of \$5,000.00 and costs, to pay the said judgment to the said defendants

Doris May Dickinson and Charles Gromer Dickinson;

That defendant William Kemp contends that since the automobile referred to in his said complaint in said action numbered 18256 is covered by said insurance policy plaintiff herein is obliged under said policy to pay to said defendant William Kemp such sum or sums as he may recover as damages in said action against said defendant L. K. Fereva up to the aggregate amount of \$7,500.00;

[65]

Defendant L. K. Fereva contends that since said automobile referred to in the complaints in both of said actions is an automobile covered by the terms of said insurance policy, this plaintiff has the obligation under said policy to defend said L. K. Fereva in said actions, and further contends that plaintiff is under obligation to pay, and is liable to pay, any sums recovered, or to be recovered, as damages by said Doris May Dickinson, Charles Gromer Dickinson and William Kemp by reason of the alleged accident set forth in the complaints in said two actions, and that plaintiff herein has the obligation under said policy to pay said sums to said Doris May Dickinson, Charles Gromer Dickinson and William Kemp, up to the aggregate amount recovered, not to exceed \$7,500.00 to each of said three individuals.

On the other hand plaintiff herein denies and controverts said contentions, and each of them, and on its part contends that although the automobile referred to in the said two complaints was covered

by said policy of insurance plaintiff herein has no obligations or liability under said policy so far as said alleged accident is concerned, and contends that it was released of all obligation and liability under said policy by reason of the failure of said defendant L. K. Fereva to notify plaintiff that any such accident occurred until sixty (60) days after it is alleged in the said complaints that the same did occur.

XIII.

That defendant L. K. Fereva requested plaintiff herein to defend herein and on his behalf said action brought by said Charles Gromer Dickinson and Doris May Dickinson and the said action brought by William Kemp; that plaintiff herein has defended the first of said actions subject; however, to an express and complete reservation of all rights of plaintiff, and that plaintiff, after the filing of the action by William Kemp, consented to defend said action subject, however, to an express [66] and complete reservation of all rights of plaintiff, but thereafter and on or about the 28th day of January, 1941, the said plaintiff withdrew from the defense of said action and denied any and all liability under said policy of insurance for any sums which may be due to any of the defendants herein.

XIV.

That a declaratory judgment or decree herein determining the rights and other legal relations of the parties hereto is necessary to enable plaintiff herein properly to reach its decision respecting

its continued defense of the action brought by William Kemp, and to protect plaintiff should it decide not to continue further with said defense, and to avoid the damages and loss that will result to plaintiff by reason of the accrual of expenses incident to the continuation of said defense; that the entry of a declaratory judgment or decree herein is necessary to avoid the loss and damages that will accrue, if any, to plaintiff in the event said action in said Superior Court should proceed to decision, and judgment should be entered therein for said William Kemp, since, in such event, unless a declaratory judgment or decree has been entered herein determining plaintiff's rights and liabilities under any judgment in said action in said Superior Court, plaintiff will be obliged to defend against the claims of defendants Doris May Dickinson, Charles Gromer Dickinson and William Kemp herein that plaintiff is liable to pay such judgments in said Superior Court actions up to the aggregate of \$7,500.00 and costs each.

XV.

That defendants Doris May Dickinson and Charles Gromer Dickinson should not be enjoined from undertaking to impose upon plaintiff herein liability, for the payment of the judgment heretofore rendered in their favor against defendant L. K. Fereva; that plaintiff is not now entitled to nor was it heretofore entitled to a preliminary injunction restraining the defendants herein, and each of them, and their respective attorneys, until

this court entered its final judgment and decree herein, from taking any further proceedings for the purpose of imposing any liability upon plaintiff herein based upon the judgment heretofore rendered in favor of Doris May Dickinson and Charles [67] Gromer Dickinson in said Superior Court action in the county of Placer, or based upon any judgment that may be rendered for said William Kemp in said Superior Court action in the County of Butte, and plaintiff herein will not suffer irreparable loss and/or any loss or damage in that plaintiff herein will be obliged to employ counsel to defend against said claims that plaintiff herein is liable to pay said judgments not to exceed the aggregate amount of \$7,500.00 in favor of each of the individual defendants, although plaintiff herein will have no right to recover the expenses that will be so incurred, or any part thereof, that the granting of such preliminary injunction is not necessary to avoid multiplicity of judicial proceedings in that any proceedings to impose liability upon plaintiff herein, based upon any judgment for said Doris May Dickinson and Charles Gromer Dickinson and William Kemp, or either or any of them, will present the same issues and questions as those presented by this suit for a declaratory judgment or decree.

XVI.

The court finds that the said contract of insurance herein referred to and marked "Exhibit A" of plaintiff's complaint contained the following provision:

7. Notice of Accident—Claim or Suit. Upon the occurrence of an accident written notice shall be given by or on behalf of the insured to the corporation or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses. If Claim is made or suit is brought against the insured, the insured shall immediately forward to the corporation every demand, notice, summons or other process received by him or his representative.”

The court finds that it is not true that said defendant L. K. Fereva on the 26th day of April, 1940, for the first time advised plaintiff that said accident had occurred on the 25th day of February, 1940, and that it is not true that until so advised, plaintiff had no information that an accident had occurred or that any action had been commenced; that it is not true, as plaintiff alleges in Paragraph VI of its complaint that it was released of any or all obligations and liability [68] under said policy of insurance so far as said accident is concerned, by reason of the failure of defendant L. K. Fereva to notify plaintiff that any such accident had occurred until 60 days after the said 25th day of February, 1940. In this connection the court specifically further finds as follows:

(a). That at all the times mentioned in the

complaint of plaintiff and on the 25th day of February, 1940, and for many years prior thereto, the defendant L. K. Fereva was an insurance agent for the plaintiff, General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, and that particularly on the 1st day of July, 1937, said plaintiff filed with the Insurance Commissioner of the State of California a notice of the appointment of said L. K. Fereva to act as its agent within the State of California until his license shall be denied, revoked or suspended, and that on said appointment there was issued by the Insurance Commissioner of the State of California to said L. K. Fereva an insurance agent's license which authorized said L. K. Fereva to act as an insurance agent for plaintiff in the County of Placer and to solicit, negotiate or effect contracts of insurance (except life and interinsurance) on behalf of plaintiff; that particularly for the fiscal year commencing July 1, 1939 and ending July 1, 1940, said L. K. Fereva was granted license No. 10513 by the Insurance Commissioner of the State of California; that on said appointment said L. K. Fereva yearly, commencing July 1, 1937 up to and including July 1, 1940, and ending with the fiscal year 1941, received his license from said insurance commissioner and acted as one of the agents for said company in said County of Placer; that during all of said period of time and for about five years prior to said July 1, 1937, said defendant L. K. Fereva solicited, negotiated and effected and caused to be issued as an

agent for said plaintiff numerous policies or contracts of insurance, acting in concert with and by and through Wentz & Erlin, the attorneys in fact for said plaintiff corporation in the State of California, who at all times herein mentioned have their [69] principal place of business at 206 Sansome Street, San Francisco, California, and that said policies of insurance thus contracted for and effected in behalf of plaintiff corporation by said L. K. Fereva included fire and theft, public liability, collision, property damages, comprehensive insurance and other kindred policies; that during the period of time herein mentioned said L. K. Fereva contracted for and effected in behalf of plaintiff corporation numerous policies of insurance of all types with said plaintiff corporation, by and through Wentz & Erlin, its attorneys in fact, and from time to time was paid and received the regular stipulated commissions for the obtaining of said business and acting as an insurance agent for said plaintiff corporation in the County of Placer in connection with said policies and contracts of insurance.

(b). That specifically from and after the said first day of July, 1937, said defendant L. K. Fereva was called upon to and did, in connection with his duties as agent for said plaintiff, report to said plaintiff company any and all accidents or loss or liability arising under any such policies issued by said plaintiff to him, or through him, as its agent and representative thereof by giving oral notice to said Wentz & Erlin at its agency office in Sacra-

mento or San Francisco; that it was not the practice or custom of said defendant L. K. Fereva, nor of said company, as far as said L. K. Fereva was concerned, to have said L. K. Fereva send in any written notices as agent for said company, but that all such notices of any liability or loss or any claim arising under any of the policies or contracts of indemnity insurance, collision insurance, public liability insurance, fire or theft or otherwise were all made by oral notices given by said L. K. Fereva to said Wentz & Erlin, and thereafter the same was always duly acted upon by said plaintiff corporation by and through their said attorneys in fact, Wentz & Erlin, who directly represented said plaintiff under a power of attorney in the State of California; that on numerous occasions up to and including the first day of July, 1941, that was the accepted, customary and followed [70] practice, mode and system of giving notice of any accident or loss to said plaintiff corporation by said L. K. Fereva of any accident or any loss sustained by said L. K. Fereva, or others reporting to him, as agent for said plaintiff corporation under any policy of insurance issued by the Plaintiff corporation to said L. K. Fereva individually or through him to third persons as plaintiff's agent and representative.

(c). That for many years prior to the 25th day of April, 1940, in the event of any report of an accident or claim for loss or indemnity on any of the contracts of insurance issued by plaintiff to, or through, said defendant L. K. Fereva as its

agent, said defendant L. K. Fereva orally notified said plaintiff corporation by notice given to one R. F. Urquhart, District Representative of the plaintiff corporation, and who was employed as such and directly represented Wentz & Erlin, and who maintained his headquarters in the branch office of said Wentz & Erlin in the City of Sacramento, State of California; that on such occasions, in the event of any accident or loss arising under any policy of insurance issued to, or written by, or through, said L. K. Fereva, said L. K. Fereva gave oral notice to said R. F. Urquhart of the happening of such accident or loss arising, and thereupon the same was duly recognized by plaintiff as a sufficient notice and compliance with the terms of the policies of insurance requiring written notice be given, and that the same became and was the accepted mode, system and custom of giving notice of claims or of accidents, or of any loss as between said plaintiff corporation and said defendant L. K. Fereva on any policies of insurance issued to, or written by or through him; that for the period of time herein mentioned said plaintiff corporation allowed and permitted said R. F. Urquhart to hold himself out to said defendant L. K. Fereva as the person to whom such oral notice of any accident or loss on any policies of insurance issued to said L. K. Fereva, or others by and through him, was to be given and that for a period of about six years prior to the 15th day of March, 1940, that condition continued and was

consistently followed by said defendant L. K. Fereva in the place and stead of any written notice, and [71] particularly in the cases of indemnity insurance policies as to public liability, property damage or collision insurance, that was the manner and form in which said defendant L. K. Fereva gave notice under Condition 7 of said policy of any accident or loss arising thereunder and, accordingly, said plaintiff is now estopped to deny said authority of said R. F. Urquhart to receive such notice of any loss from L. K. Fereva orally and from asserting or claiming as a defense as against said defendant L. K. Fereva or these defendants that notice of loss in connection with the accident referred to in plaintiffs complaint was not given in writing.

(d) That on the 16th day of December, 1939, the policy of insurance set out in the complaint of plaintiff became effective as to said defendant L. K. Fereva, doing business as "Fereva Chevrolet Company, and was in full force and effect until 12:01 AM December 16, 1940; that the accident referred to in plaintiff's complaint, which defendants Charles Gromer Dickinson and Doris May Dickinson and William Kemp herein were injured, occurred on February 25, 1940; that thereafter and within a period of about ten days, said defendant L. K. Fereva, following the accepted and usual mode, custom and procedure of notice to be given to plaintiff corporation, orally notified said R. F. Urquhart of the happening of said accident referred to in plaintiff's complaint, and did not ren-

der any written notice, or file any written notice with plaintiff by reason of his reliance on the previous practice, mode, conduct, attitude and relationship existing between said plaintiff and himself in reference to insurance policies issued by plaintiff to, or through, the agency of said L. K. Fereva, and which in case of accident or loss were reported to the plaintiff corporation orally by and through said R. F. Urquhart, District Representative of said Wentz & Erlin, attorneys in fact of said plaintiff corporation as above fully set forth.

(e) The court further finds that at the time of said accident, to wit, on the 25th day of February, 1940, said L. K. [72] Fereva was the agent of plaintiff in connection with the contract of liability insurance issued by it, effective as of December 16, 1939, and that in all respects all of his actions and conduct subsequent to said accident, including the oral notice given by him to said R. F. Urquhart and Wentz & Erlin were so done by him individually and pursuant to his status as an agent for said company and in line with his general authority and accepted practice, mode and custom in connection with notice of any accident or loss to be given said plaintiff company in the event of accident or loss under any policies of insurance issued by plaintiff to or written for said L. K. Fereva, as its agent, servant and employee.

(f) That said defendant L. K. Fereva, by reason of the facts and circumstances here in above set forth in subdivisions (a), (b), (c), (d) and (e), fully complied with the requirements set up and

considered the general practice, mode and custom of the plaintiff corporation in giving notice of any accident or injury, and within ten days after the 25th day of February, 1940 gave such notice orally to said R. F. Urquhart, District Representative of plaintiff corporation, who was apprised of the happening of said accident and who was under a duty and obligation forthwith to act thereon as he had done in similar instances for many years prior thereto in behalf of said plaintiff corporation.

(g) That by reason of all of the foregoing facts and circumstances herein alleged under subdivisions (a), (b), (c), (d), (e) and (f), said plaintiff waived the provision contained in paragraph 7 of the insurance contract in question requiring that written notice be given by or on behalf of the insured to the corporation or any of its authorized agents as soon as practicable, and that as far as these defendants are concerned all of the provisions of said paragraph 7 of the policy of insurance were duly waived by said plaintiff corporation, and moreover by reason of the facts and circumstances herein set forth so far these defendants are concerned, said plaintiff corporation is estopped from claiming any benefit by or through the provisions pertaining to written notice of accident required to be given and as referred to in condition 7 of said contract [73] of indemnity insurance, and is estopped from setting the same up as a defense to the rights of these defendants

herein, if any they have, under the terms of said contract of indemnity insurance referred to in plaintiffs complaint and marked "Exhibit A".

FINDINGS ON THE CROSS-CLAIM OF DEFENDANTS CHARLES GROMER DICKINSON AND DORIS MAY DICKINSON, HUSBAND AND WIFE.

XVII.

On the cross-claim of said defendants the court herewith refers to and expressly makes as a part of the findings as if here fully set forth in detail all of the findings here in above found and made in the above entitled court and cause, and set forth in Paragraphs I, II, III, IV, V, VI, VII, VIII, X, and XVI.

XVIII.

That on the 7th day of December, 1940, judgment was rendered by the Superior Court of the State of California, in and for the County of Placer, in said action above referred to and entitled, "Doris May Dickinson and Charles Gromer Dickinson, husband and wife, Plaintiffs, versus L. K. Fereva, doing business under the firm name and style of 'Fereva Chevrolet Company', Defendant", and numbered 11844 in the files of said court, by which judgment it was ordered, adjudged and decreed that the said Doris May Dickinson and Charles Gromer Dickinson, husband and wife, have and recover from the defendant, L. K. Fereva doing business under the firm name and style of "Fereva Chevrolet Company", the sum of \$5000.00,

and costs taxed in the sum of \$215.65, and accruing costs in the sum of \$1.00. That said judgment was rendered after trial by jury in which the jury rendered its verdict in favor of said Doris May Dickinson and Charles Gromer Dickinson, and against said L. K. Fereva, doing business under the firm name and style of "Fereva Chevrolet Company", in the said amount of \$5000.00, together with costs of suit in the sum of \$216.65.

XIX.

That said judgment was entered on the 7th day of December, 1940, as aforesaid, is now a final judgment, and that [74] no bond or undertaking has been posted for the payment thereof in any proceedings on appeal or otherwise, and no part of the said judgment has been paid by said L. K. Fereva or by anyone in his behalf to said defendants and cross-claimants, and that there is now due, owing and unpaid under and by virtue of the said judgment to said defendants and cross-claimants the sum of \$5,216.65, with interest thereon at the rate of 7 per cent per annum from the 7th day of December, 1940, until paid.

XX.

The court finds that the insured defendant L. K. Fereva doing business as "Fereva Chevrolet Company" duly and fully complied with all of the terms, covenants and conditions of the policy of insurance hereinbefore referred to and set out in plaintiff's complaint and marked "Exhibit A", and

that said defendants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, under condition 9 of said policy of insurance, are entitled to recover the full amount due them under the judgment obtained in the Superior Court of the State of California, in and for the County of Placer, and fully referred to and set out in the preceding finding XIX.

XXI.

That prior to the filing of the within action said Doris May Dickinson and Charles Gromer Dickinson, husband and wife, made due demand upon the cross-defendant for the payment of the whole of said judgment, with interest and costs thereon; that said cross-defendant, however, failed and refused to pay any part or portion thereof to said cross-claimants, and there is now wholly due, owing and unpaid under by virtue of the terms of the said policy of indemnity insurance, to cross-claimants herein from said plaintiff and cross-defendant, the sum of \$5,216.65, together with interest thereon at the rate of 7 percent per annum, from December 7, 1940, until paid, and no part of which has been paid.

GENERAL FINDINGS

XXII.

The court finds that all of the allegations of the plaintiff's complaint for declaratory relief, etc., are untrue [75] except as otherwise found, modified or changed in these findings.

XXIII.

The court finds that all of the allegations contained in the answers and amendment to the answers of defendants herein are true except as otherwise found, modified or changed in these findings.

XXIV.

The court finds that all of the allegations of the complaint of defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, are true, and the allegations of the answer of plaintiff and cross-defendant to said complaint of cross-claimants, except as otherwise found, modified or changed in these findings are untrue.

XXV.

The court finds that plaintiff and cross-defendant is not entitled to any injunctive relief whatever as prayed for in its complaint.

XXVI.

That good conscience and equity require that by reason of the facts and circumstances fully set forth in Finding XVI herein, defendant L. K. Fereva be relieved from his noncompliance with the terms and conditions of Condition 7 of said policy of insurance attached to and marked "Exhibit A" in plaintiff's complaint, and this court finds that in giving notice of the accident or injury within ten days after the 25th day of February 1940, orally to said R. F. Urquhart, district representative of plaintiff, which had been set up

and considered the general practice, made and custom of the plaintiff in giving notice of any accident or loss by said defendant L. K. Fereva for himself and others, and said plaintiff, having full knowledge of all the facts and circumstances, and its previous course of conduct with said L. K. Fereva, as fully set forth and found in Finding XVI herein, thereby intended to and in fact waived the provision contained in Condition 7 of the insurance contract in question, requiring that written notice be given by said L. K. Fereva to plaintiff, and said plaintiff is hence estopped from claiming [76] any benefit by or through the provision referred to as Condition 7 of said contract of Indemnity insurance, and is estopped from setting the same up as a defense to the rights of these defendants under the terms of said contract of indemnity insurance referred to in plaintiff's complaint and marked "Exhibit A", and which was introduced in evidence in the trial of said action and marked "Plaintiff's Exhibit 1".

CONCLUSIONS OF LAW

As conclusions of law from the foregoing findings; the court concludes:

1. That this court adjudge and decree the rights and legal relations of the parties hereto under and by reason of that certain policy of automobile insurance hereinabove referred to and dated December 16, 1939, and ending at 12.01 am, December 16, 1940, in order that such declaration have the force and effect of a final judgment and decree.

2. That a declaratory judgment or decree be entered herein determining that the said contract of insurance dated December 16, 1939, and marked "Exhibit A" in plaintiff's complaint, was and is in all respects a valid and subsisting contract made and entered into by and between plaintiff and defendant L. K. Fereva, and said plaintiff, under the terms of said policy of insurance, was and is under obligation to defend said L. K. Fereva in the actions filed against said L. K. Fereva by Charles Gromer Dickinson and Doris May Dickinson, his wife, filed in the Superior Court of the State of California, in and for the County of Placer, and in the action filed by William Kemp in the Superior Court of the State of California, in and for the County of Butte.

3. That this court adjudge and decree that plaintiff herein is fully and completely liable under all of the terms and conditions as set forth in said policy of automobile insurance by reason of the accident which occurred on February 25, 1940, and as set forth in the complaint in the said two actions brought in the Superior Courts of the State of California by [77] defendants Charles Gromer Dickinson nad Doris May Dickinson, husband and wife, and William Kemp.

4. That this court adjudge and decree that the insured defendant L. K. Fereva, doing business as "Fereva Chevrolet Company", duly and fully complied with all the terms, covenants and conditions of the policy of insurance hereinbefore re-

ferred to and set out in plaintiff's complaint and marked "Exhibit A", and that said defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, under Condition 9 of said policy of insurance, are entitled to recover the full amount due them under the judgment obtained in the Superior Court of the State of California, in and for the County of Placer.

5. That this court adjudge and decree that the accident referred to in plaintiff's complaint, in which defendants Charles Gromer Dickinson and Doris May Dickinson, his wife, and William Kemp were injured, occurred on February 25, 1940, that thereafter and within a period of about ten days, said defendant L. K. Fereva Insured under said policy of insurance marked plaintiff's "Exhibit A", following the accepted and usual mode, custom and procedure of notice to be given to plaintiff corporation, orally notified said plaintiff, by and through its district representative R. F. Urquhart, of the happening of said accident referred to in plaintiff's complaint, and said plaintiff accordingly within ten days of the happening of the accident, received said notice from said insured L. K. Fereva and said insured L. K. Fereva did not deliver or render any written notice or file any written notice with plaintiff by reason of his reliance on the previous practice, mode, conduct, attitude and relationship existing between said plaintiff and said L. K. Fereva in reference to insurance policies issued by plaintiff to, or through,

the agency of said L. K. Fereva, and which, in case of accident or loss, were reported to the plaintiff orally by and through said R. F. Urquhart, District Representative [78] of Wentz & Erlin, General Agents and Attorneys in Fact of said plaintiff corporation; that accordingly, the plaintiff is liable under said policy of automobile insurance for any sum or sums of money for which judgment was given to Charles Gromer Dickinson and Doris May Dickinson, husband and wife, arising out of said collision within the limits set forth in said policy of automobile insurance, and for any sum or sums which may be recovered by defendant William Kemp.

6. That this court adjudge and decree that said plaintiff waived the provision contained in Condition 7 of the automobile insurance contract in question, requiring that written notice be given by or on behalf of the insured L. K. Fereva to the plaintiff or any of its authorized agents as soon as practicable, and that as far as these defendants are concerned, all of the provisions of said Condition 7 of the policy of insurance in question were duly waived by said plaintiff; that this court adjudge and decree that good conscience and equity requires that defendant L. K. Fereva having given notice of the accident within ten days after the 25th day of February, 1940, orally to said R. F. Urquhart, district representative of plaintiff, which had been set up and considered the general practice, mode and custom of the plaintiff in giving notice of any accident or loss by said defendant,

L. K. Fereva for himself and others, and said plaintiff, having full knowledge of all of the facts and circumstances and its previous course of conduct with said insured L. K. Fereva, said plaintiff thereby intended to and, in fact waived the provisions contained in Condition 7 of the insurance contract in question, requiring that written notice be given by said insured L. K. Fereva to plaintiff, and said plaintiff is, hence, estopped from setting the same up as a defense to the rights of these defendants under the terms of said contract of indemnity insurance referred to in plaintiff's complaint and marked "Exhibit A",

7. That this court adjudge and decree that the preliminary injunction heretofore granted, restraining defendants herein, and each of them, and their respective attorneys, from taking any further proceedings in said actions in said Superior Courts in and for the County of Butte and in and for the County of [79] Placer, and from taking any proceeding for the purpose of imposing any liability upon plaintiff herein based upon any judgment that has been rendered in favor of cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, and which may be rendered to defendant William Kemp, be and the same is hereby dissolved and declared of no further force or effect, and that said plaintiff is not entitled to any preliminary or other injunction restraining the defendants herein or any of them from doing any of the acts set forth in plaintiffs complaint.

8. That this court adjudge and decree that, during all of the time mentioned in the complaint of plaintiff, plaintiff was obligated to defend the action hereinabove referred to, brought by Charles Gromer Dickinson and Doris May Dickinsons, husband and wife, in the Superior Court of the State of California, in and for the County of Placer, against said L. K. Fereva, and ever since the 7th day of December, 1940, was and now is obligated to pay any judgment obtained by said Charles Gromer Dickinson and Doris May Dickinson, his wife, as against said L. K. Fereva which judgment remained unpaid by said L. D. Fereva.

9. That this court adjudge and decree that all times mentioned in the complaint of plaintiff, plaintiff was obligated to defend the said action filed by William Kemp against L. K. Fereva, hereinabove referred to and brought in the Superior Court of the State of California, in and for the County of Butte, and that said defense be without any reservation of any alleged rights of non-liability upon the part of said plaintiff.

10. That defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, do have and recover judgment against said plaintiff and cross-defendant in the sum of Five Thousand Two Hundred Sixteen and 65/100 Dollars (\$5,216.65), together with interest thereon at the rate of 7 per cent per annum, from December 7, 1940, until paid.

11. That the complaint of the plaintiff, except, as otherwise provided for in these conclusions of

law, be in all other respects dismissed with prejudice. [80]

12. That defendants and cross-claimants recover their costs of suit herein.

13. Let judgment be entered accordingly.

Dated this day of January, 1942.

.....

District Judge

[Endorsed]: Lodged Jan. 8, 1942. [81]

[Title of District Court and Cause.]

JUDGMENT AND DECREE

The above entitled cause came on regularly for trial in the above entitled court before the Honorable Martin I. Welsh, Judge of the above entitled court, and a jury sworn to try the issues in the above cause, and which proceeded to trial on the 8th, 11th, 22nd, 23rd, 26th and 29th days of December, 1941, on the complain of the plaintiff for declaratory relief, etc., and the answer and amendment to the answer of the defendants Charles Gromer Dickinson, Doris May Dickinson, William Kemp, and L. K. [82] Fereva, individually, and doing business under the firm name and style of "Fereva Chevrolet Company", and also on the cross-claim of defendants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, against the plaintiff above named, and the answer of said plaintiff and cross-defendant to the said cross-claim of said defendants; Myrick, Deering and Scott,

Esq., appeared as attorneys for plaintiff and cross-defendant above named; J. Oscar Goldstein, Esq., Burton J. Goldstein, Esq., and Emmett J. Seawell, Esq., appeared as attorneys for defendants and cross-claimants, Charles Gromer Dickinson and Doris May Dickinson, husband and wife; Geis & Hogle, Esqs., by Milton M. Hogle, Esq., appeared as attorney for defendant L. K. Fereva, individually, and doing business under the firm name and style of "Fereva Chevrolet Company"; Erling S. Norby, Esq., appeared as attorney for defendant William Kemp; and evidence both oral and documentary having been introduced and the cause submitted to the court for consideration and decision, and after due deliberation thereon, the court having adopted the verdicts as rendered by the jury in the above entitled court and cause, and having made and caused to be filed its written findings of fact and conclusions of law, and ordered that a judgment be entered in accordance therewith;

Wherefore, By Reason of the Law and Findings of Fact Aforesaid, It Is Hereby Ordered, Adjudged and Decreed as Follows:

I.

That this court adjudges and decrees the rights and legal relations of the parties hereto under and by reason of that certain policy of automobile insurance dated December 16, 1939, and ending at 12:01 a.m. December 16, 1940, in order that such declaration have the force and effect of a final judgment and decree.

II.

That a declaratory judgment and decree be and the same is hereby entered herein determining that the said contract of insurance dated December 16, 1939, and marked "Exhibit A" in plaintiff's complaint, copy of which is hereunto attached and [83] marked "Exhibit A", was and is in all respects a valid and subsisting contract made and entered into by and between plaintiff and defendant L. K. Fereva, and said plaintiff, under the terms of said policy of insurance, was and is under obligation to defend said L. K. Fereva in the actions filed against said L. K. Fereva by Charles Gromer Dickinson and Doris May Dickinson, his wife, filed in the Superior Court of the State of California, in and for the County of Placer, and in the action filed by William Kemp in the Superior Court of the State of California, in and for the County of Butte.

III.

That this court adjudges and decrees that plaintiff herein is fully and completely liable under all of the terms and conditions as set forth in said policy of automobile insurance by reason of the accident which occurred on February 25, 1940, and as set forth in the complaint in the said two actions brought in the Superior Courts of the State of California by defendants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, and William Kemp.

IV.

That this court adjudges and decrees that the insured defendant L. K. Fereva, doing business as "Fereva Chevrolet Company", duly and fully complied with all the terms, covenants and conditions of the policy of insurance hereinbefore referred to and set out in plaintiffs complaint and marked "Exhibit A", copy of which is hereunto attached and marked "Exhibit A", and that said defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, under Condition 9 of said policy of insurance, are entitled to recover the full amount due them under the judgment obtained in the Superior Court of the State of California, in and for the County of Placer.

V.

That this court adjudges and decrees that the accident referred to in plaintiff's complaint, in which defendants Charles Gromer Dickinson and Doris May Dickinson, his wife and William Kemp were injured, occurred in February 25, 1940; that thereafter [84] and within a period of about ten days, said defendant L. K. Fereva, the insured under said policy of insurance marked plaintiff's "Exhibit A", copy of which is hereunto attached and marked "Exhibit A", following the accepted and usual mode, custom and procedure of notice to be given to plaintiff corporation, orally notified said plaintiff, by and through its district representative R. F. Urquhart, of the happening of said accident referred to in plaintiff's complaint, and

said plaintiff accordingly, within ten days of the happening of the accident, received said notice from said insured L. K. Fereva, and said insured L. K. Fereva did not deliver or render any written notice or file any written notice with plaintiff by reason of his reliance on the previous practice, made, conduct, attitude and relationship existing between said plaintiff and said L. K. Fereva in reference to insurance policies issued by plaintiff to, or through, the agency of said L. K. Fereva, and which, in case of accident or loss, were reported to the plaintiff orally by and through said R. F. Urquhart, District Representative of Wentz & Erlin, General Agents and Attorneys in Fact of said plaintiff corporation; that accordingly, the plaintiff is liable under said policy of automobile insurance for any sum or sums of money for which judgment was given to Charles Gromer Dickinson and Doris May Dickinson, husband and wife, arising out of said collision within the limits set forth in said policy of automobile insurance, and for any sum or sums which may be recovered by defendant William Kemp.

VI.

That this court adjudges and decrees that said plaintiff waived the provisions contained in Condition 7 of the automobile insurance contract in question, requiring that written notice be given by or on behalf of the insured L. K. Fereva to the plaintiff or any of its authorized agents as soon as practicable, and that as far as these defendants are con-

erned, all of the provisions of said Condition 7 of the policy of insurance in question were duly waived by said plaintiff; that this court adjudges and decrees that good conscience and equity requires that defendant L. K. Fereva having given notice of the accident within ten days after the 25th day of February, 1940, orally to said R. F. Urquhart, [85] district representative of plaintiff, which had been set up and considered the general practice, mode and custom of the plaintiff in giving notice of any accident or loss by said defendant L. K. Fereva for himself and others, and said plaintiff, having full knowledge of all of the facts and circumstances and its previous course of conduct with said insured, L. K. Fereva said plaintiff thereby intended to and, in fact, waived the provisions contained in Condition 7 of the insurance contract in question, requiring that written notice be given by said insured L. K. Fereva to plaintiff, and said plaintiff is, hence, estopped from setting the same up as a defense to the rights of these defendants under the terms of said contract or indemnity insurance referred to in plaintiff's complaint, copy of which is attached hereto and marked "Exhibit A".

VII.

That this court adjudges and decrees that the preliminary injunction heretofore granted, restraining defendants herein, and each of them, and their respective attorneys, from taking any further proceedings in said actions in said Superior Courts in and for the County of Butte and in and for

the County of Placer, and from taking any proceeding for the purpose of imposing any liability upon plaintiff herein based upon any judgment that has been rendered in favor of cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, and which may be rendered to defendant William Kemp, be and the same is hereby dissolved and declared of no further force or effect, and that said plaintiff is not entitled to any preliminary or other injunction restraining the defendants herein or any of them from doing any of the acts set forth in plaintiff's complaint.

VIII.

That this court adjudges and decrees that, during all of the times mentioned in the complaint of plaintiff, plaintiff was obligated to defend the action hereinabove referred to, brought by Charles Gromer Dickinson and Doris May Dickinson, husband and wife, in the Superior Court of the State of California [86] in and for the County of Placer, against said L. K. Fereva, and ever since the 7th day of December, 1940, was and now is obligated to pay any judgment obtained by said Charles Gromer Dickinson and Doris May Dickinson, his wife, as against said L. K. Fereva.

IX.

That this court adjudges and decrees that at all times mentioned in the complaint of plaintiff, plaintiff was obligated to defend the said action filed by William Kemp against L. K. Fereva, here-

inabove referred to and brought in the Superior Court of the State of California, in and for the County of Butte, and that said defense be without any reservation of any alleged rights of non-liability upon the part of said plaintiff:

X.

That defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, do have and are hereby granted judgment against said plaintiff and cross-defendant General Accident Fire and Life Assurance Corporation, Ltd., a corporation, in the sum of Five Thousand Two Hundred Sixteen and 65/100 Dollars (\$5,216.65), together with interest thereon at the rate of 7 per cent per annum from December 7, 1940, until paid.

XI.

That the complaint of the plaintiff, except as otherwise provided *fo* in this judgment and decree, be in all other respects dismissed with prejudice.

XII.

That the defendants and cross-claimants above named do recover against said plaintiff and cross-defendant their costs incurred in this action in the sum of \$.....

Dated this day of January, 1942.

.....
District Court [87]

[Title of District Court and Cause.]

AMENDMENTS, OBJECTIONS AND EXCEPTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW HERETOFORE SUBMITTED BY DEFENDANTS.

Plaintiff herein submits the following amendments, objections and exceptions to the findings of fact and conclusions of law submitted by defendants as follows:

1. On page 3, lines 1 to 6, strike out the following language, "the court hereby adopts the verdicts as rendered by the Jury in the above entitled court and cause as set out hereinabove and which were duly recorded by the clerk of the court as [88] the verdicts of the jury," and insert in place thereof the following language: "The court refuses to accept or adopt the said verdicts as rendered by the jury".

Said amendment is suggested upon the following grounds, namely: The said verdicts, and each thereof, should be modified or vacated by reason of the insufficiency of the evidence herein to justify said verdicts, or either thereof, and that said verdicts are and each of them is against law; also upon the ground of errors at law occurring at the trial and excepted to by this plaintiff; upon the ground that said verdicts, and each thereof, are contrary to the evidence; upon the ground that the verdicts, and each thereof, purport to decide not only legal but equitable issues; that certain

equitable issues, to wit, waiver and estopped, are purportedly covered by said verdicts, and each thereof, and are in essence equitable issues for determination of the Court alone; that said issues relative to alleged waiver and estoppel are not, neither is either one of them, triable by a jury under the declaratory judgment act, or equitable procedure.

That said verdicts, and each thereof, are purely advisory and that they are not, nor is either of them, sustained by the evidence or in conformity with law or equity.

2. Strike out all of the proposed findings beginning with the words "the defendant" down to and including the word "him", page 5, line 17, reading as follows: "the defendant L. K. Fereva on the request and suggestion of one Walter Henretty, an agent and employee of plaintiff, signed a written notice of accident prepared by said Walter Henretty to plaintiff herein, advising plaintiff that said accident had occurred, and further advising plaintiff that an action for damages had been commenced against him by the said Charles Gromer Dickinson and Doris May Dickinson, and delivered to him the summons and complaint which had been served upon him.", and insert in lieu thereof the following: [89] "the defendant L. K. Fereva first gave plaintiff written notice of said accident."

3. Page 8, lines 6 to 8, strike out the language beginning "to notify plaintiff", and insert in lieu thereof the following: "to give plaintiff written no-

tice of said accident until more than sixty days after its occurrence.”

4. Page 8, lines 10 to 11, strike out the words, “That defendant L. K. Fereva requested plaintiff herein to defend herein and on his behalf said action”, and in lieu thereof substitute the words “That plaintiff offered to defend said L. K. Fereva under full reservation of rights, which said offer said L. K. Fereva accepted, and plaintiff did with said reservation of rights give defense for him and on his behalf in said action”.

5. At page 9, lines 9 to 11, strike out the following: “that plaintiff is liable to pay such judgments in said Superior Court actions up to the aggregate of \$7,500.00 and costs each.”

6. At page 9, line 13 and following, strike out all of paragraph XV.

7. On page 10, strike outlines 19-to 31, and insert in lieu thereof the following: “The court finds that it is true that L. K. Fereva did on the 26th day of April, 1940, for the first time give written notice to plaintiff that said accident had occurred on the 25th day of February, 1940; that until so advised plaintiff has no information that an accident had occurred or that any action had been commenced: that plaintiff was released of any and all obligations and liability under said policy of insurance so far as said accident is concerned by reason of the failure of defendant L. K. Fereva to give written notice to plaintiff of the occurrence of said accident as required by said paragraph 7 of said contract of insurance marked exhibit “A”.

8. Strike out beginning at line 32, page 10, down to and including line 16 page 16, the same constituting paragraph XVI, sub-divisions a to g inclusive, and each and every part thereof, upon the ground that said L. K. Fereva was at all of the times therein mentioned an agent of the plaintiff corporation; that [90] as such agent it was incumbent upon him to exercise the utmost fidelity and reasonable diligence to report to his principal information relative to said principal's business; that as an insured under the said contract of insurance it was his duty to give written notice as soon as practicable after the happening of an accident covered by the said policy; that the terms and conditions of the said policy are clear and explicit; that there is no evidence herein that the said terms and all thereof were not clearly and thoroughly understood by the said L. K. Fereva; that there is no ambiguity with reference to the terms of said policy which requires that it be supplemented by evidence herein that said L. K. Fereva gave no written notice whatever to the plaintiff, or to any agent or agents of the plaintiff, prior to April 26, 1940; that there is no evidence showing or tending to show that any representation was made to said L. K. Fereva that the provisions contained in paragraph 7 above referred to were or would be waived; that under the provision of paragraph 12 of said contract of insurance no agent or agents of plaintiff corporation has authority or power to change or alter any provisions of condition of said contract of insurance, including those contained in

paragraph 7; that in and by said paragraph 12 it is provided as follows; "No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the corporation from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part thereof, signed by the United States Manager."

That the evidence is insufficient to show that any alleged notice given by Fereva to Urquhart complied with condition 7 of said policy.

That the foregoing amendments, objections and exceptions are proposed with reference to each and every the findings submitted by defendants and cross-complainants in connection with their [91] cross-claims and answers, and to the general findings following the same insofar as they are relevant and applicable thereto.

Dated: January 26, 1942.

Respectfully submitted,

MYRICK & DEERING AND
SCOTT

JAMES WALTER SCOTT

Attorneys for plaintiff and
Cross-Defendant.

[Endorsed]: Filed Jan. 27, 1942. [92]

[Title of District Court and Cause.]

FINDINGS

The above entitled cause came on regularly for trial in the above entitled court before the Honorable Martin I. Welsh, Judge of the above entitled court, and a jury sworn to try the issues in [93] the above cause. It proceeded to trial on the 8th, 11th, 22nd, 23rd, 26th, and 29th days of December, 1941, on the complaint of the plaintiff for declaratory relief, etc., and the answer and amendment to the answer of the defendants Charles Gromer Dickinson, Doris May Dickinson, William Kemp, and L. K. Fereva, individually, and doing business under the firm name and style of "Fereva Chevrolet Company" and also on the cross-claim of defendants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, against the plaintiff above named, and the answer of said plaintiff and cross-defendant to the said cross-claim of said defendants; Myrick, Deering and Scott, Esq., appeared as attorneys for plaintiff and cross-defendant above named; J. Oscar Goldstein, Esq., Burton Goldstein, Esq., and Emmett J. Seawell, Esq., appeared as attorneys for defendants and cross-claimants, Charles Gromer Dickinson and Doris May Dickinson, husband and wife; Geis & Hogle, Esqs., by Milton M. Hogle, Esq., appeared as attorney for defendant L. K. Fereva, individually, and doing business under the firm name and

style of "Fereva Chevrolet Company"; Erling S. Norby, Esq., appeared as attorney for defendant William Kemp; and evidence both oral and documentary having been introduced and the cause submitted to the court for consideration and decision, the court makes and files its written Findings of Fact and Conclusions of Law and orders that the judgment be entered in accordance therewith.

The court hereby finds as follows:—

1.

That plaintiff, General Accident Fire and Life Assurance Corporation, Ltd., is now and was at all times herein mentioned a corporation organized and existing under and by virtue of the laws of Scotland, and at all times herein mentioned said corporation [94] was and is now engaged in the business of insurance against loss or damage arising out of liability; that said corporation is and was at all the times herein mentioned duly authorized and licensed to do business in the State of California, and having its principal place of business within the State of California in the City and County of San Francisco.

2.

That defendants Charles Gromer Dickinson and Doris May Dickinson are citizens of the State of California, and reside in the City of Chico, County of Butte, in said State;

That defendant William Kemp is a citizen of the State of California, and resides in the Town of Yuba City, County of Sutter, said State;

That defendant L. K. Fereva is a citizen of the State of California, and resides in the City of Lincoln, County of Placer, said State.

3.

That the amount in controversy exclusive of interest and costs exceeds the sum of \$3,000.00.

4.

That this suit is brought under and pursuant to the Federal Declaratory Judgment Act (Judicial Code Section 274-D, 28 U.S.C.A. Section 400).

5.

That on or about the 6th day of December, 1939, plaintiff issued a policy of automobile insurance to defendant L. K. Fereva; that the policy period was from December 16, 1939, to December 16, 1940, and said policy was in effect during all of said period; that in said policy plaintiff agreed with defendant L. K. Fereva individually and doing business under the firm name and style of [95] Fereva Chevrolet Company, to pay on behalf of said defendant L. K. Fereva, subject to the limits of liability, exclusions, conditions and other terms of said policy, all sums not exceeding \$7,500.00 for each person, and not exceeding \$30,000.00 for each accident, which said defendant L. K. Fereva should become obliged to pay by reason of the liability imposed upon him by law for damages, including damages for care and loss of services because of bodily injury sustained by any person or persons, caused by accident, and aris-

ing out of the ownership, maintenance and use of a certain automobile covered by said policy of automobile insurance, to-wit: a Cadillac Tow Car, Year 1924; that a true copy of said policy is attached to the complaint herein and marked Exhibit "A".

6.

That on the 25th day of February, 1940, at the hour of approximately 6:15 o'clock A.M. of said day, an accident occurred on U. S. Highway number 99-E, between the cities of Roseville and Lincoln, Placer County, California, at a point approximately two miles south of the City of Lincoln; that at that time and place defendant L. K. Fereva controlled and was using upon the shoulder of said U. S. Highway number 99-E the automobile tow truck covered by said policy of insurance; that in said accident defendants Charles Gromer Dickinson, Doris May Dickinson and William Kemp received and sustained certain injuries to person and property; that on or about the 26th day of April, 1940, the defendant L. K. Fereva for the first time advised plaintiff that said accident had occurred, and that an action for damages had been commenced against him by the said Charles Gromer Dickinson and Doris May Dickinson, and that summons and complaint had been served upon him; that until so advised plaintiff had no information that an accident had occurred or that any action had been commenced; that plaintiff [96] was released of all obligations and liability under said policy of insurance so far as said accident is concerned by rea-

son of the failure of defendant L. K. Fereva to notify plaintiff that any such accident had occurred until sixty (60) days after said 25th day of February, 1940.

7.

That on or about the 12th day of April, 1940, defendants Doris May Dickinson and Charles Gromer Dickinson commenced an action for damages against defendant L. K. Fereva in the Superior Court of the State of California, in and for the County of Placer, entitled "Doris May Dickinson and Charles Gromer Dickinson, husband and wife, Plaintiffs, vs. L. K. Fereva, doing business under the firm name and style of 'Fereva Chevrolet Co.', Richard Roe Company, a corporation, Henry Roe Company, a copartnership, John Doe First, John Doe Second and John Doe Third, Defendants, and numbered therein 11844.

8.

That on or about the 30th day of November, 1940, defendant William Kemp commenced an action for damages against defendant L. K. Fereva, in the Superior Court of the State of California, in and for the County of Butte, entitled "William Kemp, Plaintiff, vs. L. K. Fereva, individually, and doing business under the firm name and style of Fereva Chevrolet Company, Charles Dickinson, First Doe, Second Doe and Third Doe, a corporation, Defendants", and numbered therein 18256.

9.

That said action so brought in the County of Placer by said Doris May Dickinson and Charles Gromer Dickinson came on regularly for trial before the court sitting with a jury; that thereafter and on or about the 6th day of December, 1940, judgment was duly [97] given, made and entered on the verdict of said jury in favor of said Doris May Dickinson and Charles Gromer Dickinson, the plaintiffs therein, and against said L. K. Fereva doing business under the firm name and style of Fereva Chevrolet Co., defendant, in the sum of \$5,000.00, and costs of suit in the sum of \$216.65.

10.

That the said action brought in the County of Butte by said defendant William Kemp, plaintiff therein, against said defendant L. K. Fereva, in which said William Kemp seeks damages in the sum of \$7,905.00, and his costs of suit, is still pending therein, and has not yet been brought to trial.

11.

That an actual controversy exists as between plaintiff and the defendants herein, as follows: Defendants Doris May Dickinson and Charles Gromer Dickinson contend that since the automobile referred to in the complaint in said action numbered 11844 is an automobile covered by the said insurance policy, plaintiff herein has an obligation under said policy, it having been adjudged in said action that said Doris May Dickinson and Charles Gromer Dickinson have judgment against said defend-

ant L. K. Fereva for the sum of \$5,000.00 and costs, to pay the said judgment to the said defendants Doris May Dickinson and Charles Gromer Dickinson;

That defendant William Kemp contends that since the automobile referred to in his said complaint in said action numbered 18256 is covered by said insurance policy plaintiff herein is obliged under said policy to pay to said defendant William Kemp such sum or sums as he may recover as damages in said action against said defendant L. K. Fereva up to the aggregate amount of \$7,500.00;

Defendant L. K. Fereva contends that since said automobile referred to in the complaints in both of said actions is an automobile [98] covered by the terms of said insurance policy, this plaintiff has the obligation under said policy to defend said L. K. Fereva in said actions, and further contends that plaintiff is under obligation to pay, and is liable to pay, any sums recovered, or to be recovered, as damages by said Doris May Dickinson, Charles Gromer Dickinson and William Kemp by reason of the alleged accident set forth in the complaints in said two actions, and that plaintiff herein has the obligation under said policy to pay said sums to said Doris May Dickinson, Charles Gromer Dickinson and William Kemp, up to the aggregate amount recovered, not to exceed \$7,500.00 to each of said three individuals.

On the other hand plaintiff herein denies and controverts said contentions, and each of them, and on its part contends that although the automobile

referred to in said two complaints was covered by said policy of insurance plaintiff herein has no obligations or liability under said policy so far as said alleged accident is concerned, and contends that it was released of all obligations and liability under said policy by reason of the failure of said defendant L. K. Fereva to notify plaintiff that any such accident occurred until sixty (60) days after it is alleged in the said complaints that the same did occur.

12.

That defendant L. K. Fereva has requested plaintiff herein to defend in his name and on his behalf said action brought by Doris May Dickinson and Charles Gromer Dickinson, and the said action brought by William Kemp; that plaintiff herein has defended the first of said actions, subject, however, to an express and complete reservation of all rights of plaintiff, and that plaintiff has consented to defend said action brought by William Kemp, subject, however, to an express and complete reservation of all rights [99] of plaintiff, and has defended said action hitherto, and said action brought by William Kemp is now at issue; that plaintiff has withdrawn from the defense of said action.

13.

The court further finds that a declaratory judgment or decree herein determining the rights and other legal relations of the parties hereto is necessary to adjudicate and determine the rights, legal obligations and responsibilities of the plaintiff

herein, if any there are, to the various defendants herein; to determine whether or not plaintiff herein should pay the judgment heretofore rendered in favor of Doris May Dickinson and Charles Gromer Dickinson against L. K. Fereva; to determine whether plaintiff should further defend the action at law above referred to brought by William Kemp against said L. K. Fereva, and its liability, if any there be, to pay and discharge any judgment rendered in the said action brought by William Kemp, and also to determine its rights, duties and obligations, if any there be, with reference to L. K. Fereva, its assured.

14.

The court further finds that in said policy of insurance hereinabove referred to as Exhibit "A", it was provided in condition number 7 thereof as follows: "Notice of Accident—Claim or Suit. Upon the occurrence of an accident written notice shall be given by or on behalf of the insured to the corporation or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses. If claim is made or suit is brought against the insured, the insured shall immediately forward to the corporation every demand, notice, summons or other process received by him or his representative." [100]

The court further finds that upon the occurrence of the accident referred to herein, namely on February 25, 1940, written notice was not given by said L. K. Fereva, the assured under said policy of insurance, or on behalf of said insured, to the plaintiff or any of its authorized agents as soon as practicable; that no notice whatever was given to plaintiff prior to April 26, 1940; that prior to said April 26, 1940, no notice was given by said L. K. Fereva to plaintiff in writing or otherwise containing particulars sufficient to identify the insured, or reasonably obtainable information respecting the time, place and circumstances of the said accident, the names and addresses of the injured and of available witnesses, or any of the said items; the court further finds that there was no waiver or change made or effected in any part of the said policy of insurance and that the plaintiff is not estopped from asserting its rights herein under the terms of said policy, and that no terms of the said policy are or have been waived or changed by any course of conduct pursued by the plaintiff herein.

15.

The court further finds that as an agent of the plaintiff corporation said L. K. Fereva was under obligation to give notice of claims or of accidents to plaintiff having to do with any loss or liability that may have been sustained or incurred by plaintiff corporation, and that was or had been brought to the attention of the said L. K. Fereva as such agent; that in addition thereto and separate and

distinct therefrom there was an obligation on the part of said L. K. Fereva as an assured under the said policy of insurance hereinabove referred to to give written notice to the plaintiff corporation in conformity with condition 7 of the said policy of insurance; that said L. K. Fereva did not give such notice, or any notice prior to April 26, 1940. [101]

As conclusions of law from the foregoing the court hereby finds that plaintiff should have judgment herein as prayed for, and that defendants take nothing by their answers or cross-complaints herein.

Let judgment be entered accordingly.

Dated: September 24, 1942.

MARTIN I. WELSH,
Judge.

[Endorsed]: Filed Sep. 24, 1942. [102]

In the District Court of the United States, Northern District of California, Northern Division

Equity No. 4287-L

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD., a corporation,

Plaintiff,

vs.

CHARLES GROMER DICKINSON, DORIS MAY DICKINSON, WILLIAM KEMP, and L. K. FERREVA, individually, and doing business under the firm name and style of "FERREVA CHEVROLET COMPANY",

Defendants.

CHARLES GROMER DICKINSON and DORIS MAY DICKINSON, husband and wife,

Cross-Claimants.

vs.

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND, a corporation,

Cross-Defendant.

JUDGMENT AND DECREE

The above entitled cause came on regularly for trial in the above entitled court before the Honorable Martin I. Welsh, Judge of the above entitled court, and an advisory jury sworn to try the

issues in the above cause, which returned two verdicts.

Thereupon defendants and cross-complainants moved the said advisory verdicts be adopted by the court and after argument by counsel and the filing of briefs herein all of said parties submitted the cause to the court for consideration and decision, and requested the court to give and make its written Findings of Fact and Conclusions of Law.

The court thereupon set aside said advisory verdicts, and each thereof, as the court finds they are, and each of them is, entirely unsupported by the evidence, and as requested by the parties herein the court has made and filed its written Findings of Fact and Conclusions of Law, to which reference is hereby made, and which said Findings and Conclusions are made a part hereof.

The Court, being fully advised in the premises, now therefore upon consideration thereof it is this day

1. Adjudged, Ordered and Decreed that the plaintiff, General Accident Fire and Life Assurance Corporation, Ltd., a corporation, has no obligation under the policy of automobile insurance issued to defendant L. K. Fereva, individually, and doing business under the firm name and style of "Fereva Chevrolet Company", on or about the 6th day of December, 1939, which said policy is referred to in plaintiff's complaint herein, to defend said L. K. Fereva in the said actions in said complaint referred to brought respectively in the Superior Court of the County of Butte, State of California;

that plaintiff [103] herein has no liability under the said policy of insurance by reason of the alleged accident set forth in the complaint of plaintiff to indemnify the said L. K. Fereva, individually, and doing business under the firm name and style of "Fereva Chevrolet Company," Charles Gromer Dickinson, Doris May Dickinson, or William Kemp, or any thereof, for loss or damages because of injury to persons or destruction of property, including the loss of use thereof, caused by the accident which occurred on the 25th day of February, 1940, on U. S. Highway 99-E, between the cities of Roseville and Lincoln, Placer County, California, at a point approximately two miles south of the city of Lincoln.

2. It Is Further Adjudged, Ordered and Decreed that the plaintiff was released and discharged of all obligations and liability under said policy by reason of the failure of said defendant L. K. Fereva to notify plaintiff that any such accident occurred within sixty (60) days after the occurrence thereof.

3. It Is Further Adjudged, Ordered and Decreed that the plaintiff herein is under no liability for the payment of the judgment heretofore rendered in favor of Doris May Dickinson and Charles Gromer Dickinson, against defendant L. K. Fereva in the action brought by them against him in the Superior Court of the County of Placer, State of California, numbered 11844 in the records and files of said court, or any part or portion of said judgment; that plaintiff herein is under no liability by

reason of the issuance of the said policy to pay any judgment that may be recovered by defendant William Kemp in said Superior Court action in the County of Butte, State of California, numbered 18256, in the records and files of said court, or any part or portion of such judgment.

4. It Is Further Adjudged, Ordered and Decreed that the defendants Doris May Dickinson, Charles Gromer Dickinson, William Kemp, and L. K. Fereva, individually and doing business under the [104] firm name and style of "Fereva Chevrolet Company", their and each of their agents and attorneys, are, and each of them is, restrained and enjoined from instituting or proceeding with any suit or action against the plaintiff General Accident Fire and Life Assurance Corporation, Ltd., a corporation, based upon any alleged liability to them, or either or any of them, arising out of or based upon the execution and issuance of the said policy of insurance.

5. It Is Further Adjudged, Ordered and Decreed that defendants and cross-complainants take nothing herein; that no costs be recovered herein by plaintiff against the defendants and cross-complainants.

Done in open court this 8th day of October, 1942.

MARTIN I. WELSH,

United States District Judge.

[Endorsed]: Filed Oct. 9, 1942. [105]

[Title of District Court and Cause.]

PETITION AND MOTION FOR NEW TRIAL

Come now the defendants and cross-claimants above named and by their attorneys J. Oscar Goldstein, Esq., Milton M. Hogle, Esq., and Erling S. Norby, Esq., respectfully petition the above entitled Honorable Court for a new trial of the above entitled [106] cause, after judgment was rendered by Honorable Martin I. Welsh in favor of plaintiff and cross-defendant and against defendants and cross-claimants in the above entitled court and cause, upon the following grounds and causes materially affecting the substantial rights of the defendants and cross-claimants:

I.

Insufficiency of the evidence to justify the decision and judgment of the Court.

II.

Insufficiency of the evidence to justify the decision and judgment, in that it is against law.

III.

Errors in law occurring at the trial.

IV.

Insufficiency of the evidence to justify the decision and judgment of the court for the following reasons:

(a) That it affirmatively appears and the evidence is conclusive that the plaintiff is liable under

all of the terms and conditions as set forth in the policy of automobile insurance by reason of the accident which occurred on February 25, 1940, and particularly to defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife.

(b) That it affirmatively appears and the evidence is undisputed in favor of the defendants and cross-claimants that the insured defendant L. K. Fereva, doing business as "Fereva Chevrolet Company", duly and fully complied with all the terms, covenants and conditions of the policy of insurance set out in plaintiff's complaint and marked "Exhibit A", and that said defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, under condition 9 of said policy of insurance are entitled to recover the full amount due them under the judgment obtained in the Superior Court of the State of California, in and for the [107] County of Placer.

(c) That it affirmatively appears from the evidence and is undisputed that the insured informed the plaintiff and cross-defendant company of the accident within ten (10) days after the occurrence of the accident, and that no prejudice of any kind resulted to said plaintiff and cross-defendant company to any degree whatsoever.

(d) That it affirmatively appears and the evidence is conclusive that plaintiff and cross-defendant company was not relieved of liability by the failure of the insured to comply with condition 7 of the policy requiring immediate written notice

of the accident with said company, because all of the provisions of said condition 7 of the policy of insurance in question were duly waived by said plaintiff and cross-defendant company.

(e) That it affirmatively appears and the evidence is conclusive that defendant L. K. Fereva gave due notice of the accident within ten (10) days after the 25th day of February, 1940, orally to R. F. Urquhart, district representative of plaintiff and cross-defendant company, which had been set up and considered the general practice, mode and custom of the plaintiff company in giving notice to said company of any accident or loss by said defendant L. K. Fereva for himself and others, thereby waiving the provisions contained in condition 7 of the insurance contract in question, and said plaintiff and cross-defendant is hence estopped from setting up the provisions of condition 7 as a defense to the rights of defendants and cross-claimants under said contract of indemnity insurance.

(f) That while it is the established law that the failure of the assured to comply with the condition of the policy, requiring immediate written notice of the accident under certain conditions, relieves the plaintiff company from liability [108] on the judgment, nevertheless in the instant case the evidence is undisputed that the company waived said provisions relative to written notice, and further, that no prejudice resulted to plaintiff company from the failure of the assured to give such

immediate written notice as provided by condition 7, and that said assured L. K. Fereva cooperated with plaintiff company in every way to defeat the action filed against him in the lower court by the Dickinsons and fully and completely made a substantial compliance with the terms and conditions of his policy of indemnity insurance.

(g) That it affirmatively appears that defendants and cross-claimants were entitled as a matter of law to a jury trial of the issues involved in the action filed by plaintiff and cross-defendant; that the verdict of the jury finding in favor of defendants and cross-claimants and against the plaintiff company was determinative of all issues involved in the action thus filed by plaintiff and cross-defendant; that said jury found in favor of said Dickinsons and against plaintiff company in the sum of Five Thousand Two Hundred Sixteen Dollars and Sixty-five Cents (\$5,216.65), with interest, and that such judgment in their behalf should have been entered by the Clerk of the Court forthwith, together with judgment in favor of the other defendants as found by the jury's verdict; that the findings and judgment as made and entered by the Court are contrary to the verdict of the jury and have no substantial basis in fact or law.

(h) That it affirmatively appears that defendant L. K. Fereva was the general agent of the plaintiff company, and that all his actions and conduct relative to giving notice of accidents were fully known, approved and acquiesced in by plaintiff company [109] in connection with giving notice of

loss in any accident in which he had any interest, and hence the plaintiff company was and is bound by his actions and conduct, and at least as to the defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, the verdict of the jury must be sustained and they are entitled to recover as against said plaintiff and cross-defendant the full amount of their claim due from defendant L. K. Fereva.

V.

Insufficiency of the evidence to justify the decision and judgment in that it is against law. As to this specification defendants and cross-claimants rely upon subdivisions a, b, c, d, e, f, g and h, as set forth in paragraph IV of this petition, and all of said subdivisions are made part of this paragraph as if here fully set forth in detail.

VI.

Errors in law occurring at the trial, and as grounds for same defendants and cross-claimants again rely on all of the grounds set forth in subdivisions a, b, c, d, e, f, g and h of paragraph IV herein, and all of said subdivisions are made part of this paragraph as if here fully set forth in detail. [110]

Defendants and cross-claimants, in addition to relying upon all of the foregoing grounds as hereinabove set forth, base this petition and motion for new trial further upon all of the pleadings, proceedings, papers and briefs now on file, and upon

the minutes of the Court and the testimony taken and adduced upon the trial of said cause, including the transcript of the reporter's shorthand notes.

Dated: October 14, 1942.

J. OSCAR GOLDSTEIN,
BURTON J. GOLDSTEIN,
EMMETT SEAWELL,

Attorneys for defendants and cross-claimants
Charles Gromer Dickinson and Doris May Dickinson, husband and wife.

MILTON M. HOGLE,
Attorney for L. K. Fereva, individually, and doing business under the firm name and style of "Fereva Chevrolet Company", defendant.

ERLING S. NORBY,
Attorney for defendant William Kemp.

[Endorsed]: Filed Oct. 15, 1942. [111]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco on Tuesday the 23rd day of February, in the year of our Lord one thousand nine hundred and 43.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

ORDER DENYING MOTION FOR NEW TRIAL

The motion for a new trial having been heretofore heard and submitted, being now fully considered, it is Ordered that the motion for a new trial be and the same is hereby Denied. [112]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Charles Gromer Dickinson and Doris May Dickinson, his wife, William Kemp and L. K. Fereva, individually and doing business under the firm name and style of "Fereva Chevrolet Company," defendants above named, and [113] Charles Gromer Dickinson and Doris May Dickinson, husband and wife, Cross-claimants above named, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment made and entered in the above entitled action on the 9th day of October, 1942, in favor of plaintiff and against said defendants and cross-claimants, and from the whole of said judgment, and also hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order duly made in the above entitled court and case on February 23, 1943, denying the petition and motion for a new trial of defendants and cross-claimants above named.

Dated: May 20, 1943.

J. OSCAR GOLDSTEIN,
BURTON J. GOLDSTEIN,

Attorneys for defendants and cross-claimants
Charles Gromer Dickinson and Doris May
Dickinson, husband and wife.

MILTON M. HOGLE,

Attorney for L. K. Fereva, individually, and doing
business under the firm name and style of
“Fereva Chevrolet Company,” defendant.

ERLING S. NORBY,

Attorney for defendant William Kemp.

[Endorsed]: Filed May 21, 1943. [114]

BOND ON APPEAL

Know All Men by These Presents,

That we, J. Oscar Goldstein, as principal and R. M. Macy as sureties, are held and firmly bound unto General Accident Fire and Life Assurance Corporation, Ltd., a corporation in the full and just sum of Two hundred fifty and no/100 (\$250.00) dollars, to be paid to the said General Accident Fire and Life Assurance Corporation, Ltd., a corporation certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 7th day of

July, in the year of our Lord One Thousand Nine Hundred and forty-three.

Whereas, lately at a District Court of the United States for the Northern District of California in a suit depending in said Court, between General Accident Fire and Life Assurance Corporation, Ltd., a corporation, Plaintiff and Cross-Defendant, vs. Charles Gromer Dickinson, Doris May Dickinson, William Kemp, and L. K. Fereva, individually, and doing business under the firm name and style of Fereva Chevrolet Company, Defendants and Cross-Claimants a judgment was rendered against the said Defendants and Cross-Claimants and the said General Accident Fire and Life Assurance Corporation, Ltd., a corporation having filed in said Court a notice of appeal to reverse the judgment in the aforesaid suit, on appeal to United States Circuit Court of Appeals for the Ninth Circuit, at a session of said Circuit Court of Appeals to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, That if the said Defendants and Cross-Claimants shall prosecute said appeal to effect, and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full [115] such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, if they fail to make their plea good, then the above

obligation to be void; else to remain in full force and virtue.

[Seal] J. OSCAR GOLDSTEIN.

[Seal] R. M. MACY.

Acknowledged before me the day and year first above written.

[Seal] J. R. ROBINSON,

Notary Public in and for the County of Butte,
State of California.

United States of America,
Northern District of California—ss.

J. Oscar Goldstein and R. M. Macy, being duly sworn, each for himself deposes and says, that he is a freeholder in said District, and is worth the sum of Five hundred and no/100 Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

J. OSCAR GOLDSTEIN,

R. M. MACY.

Subscribed and sworn to before me this 7th day of July A.D. 1943.

[Seal] J. R. ROBINSON,

Notary Public in and for the County of Butte, State of California.

[Endorsed]: Filed Jul. 8, 1943. [116]

[Title of District Court and Cause.]

DESIGNATION OF MATTERS TO BE
INCLUDED IN RECORD ON APPEAL

To the Clerk of the above-entitled Court:

Charles Gromer Dickinson and Doris May Dickinson, husband and wife, William Kempt and L. K. Fereva, individually, and do- [117] ing business under the firm name and style of "Fereva Chevrolet Company," defendants above named, and Charles Gromer Dickinson and Doris May Dickinson, husband and wife, cross-claimants above named, by their undersigned attorneys, hereby designate for inclusion in the transcript of record on appeal, all of the pleadings, records, proceedings and evidence with reference to the above entitled action in the above entitled court and case, which was duly tried in the above entitled court on the 8th, 11th, 22nd, 23rd, 26th and 29th days of December, 1941, excluding from said record, however, the exhibits which were offered and received in evidence, and which exhibits it is the intention of the appellants to have transmitted to the United States Circuit Court of Appeals for use and reference at the time said matter is to be heard and determined by said United States Circuit Court of Appeals.

Dated: May 20th, 1943.

J. OSCAR GOLDSTEIN,
BURTON J. GOLDSTEIN,

Attorneys for defendants and cross-claimants
Charles Gromer Dickinson and Doris May Dickinson,
husband and wife.

MILTON M. HOGLE,

Attorney for L. K. Fereva, individually, and doing
business under the firm name and style of
“Fereva Chevrolet Company,” defendant.

ERLING S. NORBY,

Attorney for defendant William Kemp.

[Endorsed]: Filed May 21, 1943. [118]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO PREPARE
AND FILE TRANSCRIPT ON APPEAL

Upon motion of J. Oscar Goldstein and Burton J. Goldstein, Esqs., attorneys for defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife; Milton M. Hogle, Esq., attorney for L. K. Fereva, individually and dba “Fereva Chevrolet Company, defendants; and Erling S. Norby, Esq., attorney for defendant William Kemp, it is hereby ordered that the time for the preparation and filing of appellants’ transcript on appeal is hereby extend- [119]
ed to and including July 31, 1943.

Dated: June 25th, 1943.

MARTIN I. WELSH,

Judge of the District Court.

[Endorsed]: Filed June 28, 1943. [120]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 120 pages, numbered from 1 to 120, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of General Accident Fire and Life Assurance Corporation vs. Charles Gromer Dickinson, et al., No. 4287, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Designation of Matters to be included in Record on Appeal, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing record on appeal is the sum of Fourteen and 25/100 (\$14.25) Dollars, and that the same has been paid to me by the attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and the official seal of said District Court, this 23rd day of July, A. D. 1943.

[Seal]

C. W. CALBREATH,

Clerk.

By F. M. LAMPERT,

Deputy Clerk.

[Title of District Court and Cause.]

TESTIMONY

Monday, December 22, 1941

11:00 O'Clock A. M.

Before: Hon. Martin I. Welsh, Judge

(A jury having been heretofore, to-wit, on Monday, December 8, 1941, empaneled and sworn to try the cause, and continuances having been duly had, the above entitled action came on for trial on this date.)

The Clerk: General Accident versus Dickinson.

Mr. Scott: Ready.

Mr. Goldstein: Ready.

The Court: Call the roll of jurors.

(Roll called by the Clerk.)

The Clerk: They are all present, sir.

The Court: You may proceed.

Mr. Goldstein: May it please your Honor, in this case on trial I am not aware of whether your Honor has received the instructions that were left here for Judge Louderback, but I desire to withdraw that set and substitute this one, which will take its place (handing documents to the Clerk). I have two instructions which I have withdrawn, and I have re-numbered some of those, and I would like to file these instructions as being the instructions of Mr. and Mrs. Dickinson and Mr. Kemp.

Now, at this time I desire to ask leave of the Court to file an amendment to the answer of the Defendants Dickinson and Kemp. A copy of this amendment, your Honor, was served on counsel for

the insurance company on December 9th. It was my intention to file the amendment on the morning of the trial, and I served Mr. Scott, the attorney for the company, the day before. It is simply setting up a waiver and an estoppel of the filing or the giving of the written notice under the terms of the policy by the actions and conduct on the part of the company through its general agents, [2*] Wentz & Erlin. Mr. Scott was familiar with those facts for some length of time prior to the time of the case coming to trial, and it was no surprise to him, and in order to comply with the law I served a notice on Mr. Scott this amendment would be filed, and I respectfully ask leave of the Court to file this document, which is verified by one of the defendants.

The Court: Any objection?

Mr. Scott: No objection.

The Court: So ordered.

Mr. Goldstein: And also the notice of motion.

The Court: You may proceed, gentlemen.

(Thereupon Mr. Scott made an opening statement on behalf of the plaintiff, and Mr. Goldstein followed with an opening statement on behalf of the defendants.)

Mr. Scott: May it please your Honor, by the pleadings, certain facts are admitted, and may I, in opening our case, state those facts?

The Court: You may.

Mr. Scott: And I will ask counsel if I am correct as I state them.

Mr. Goldstein: No objection.

* Page numbering appearing at top of page of original Reporter's Transcript.

Mr. Scott: In paragraph I it is alleged—and would it be proper to tell the jury that these facts, where they are admitted they are taken as basic facts in the case?

In paragraph I of the plaintiff's complaint it is alleged that the Plaintiff General Accident Fire and Life Assurance Corporation, Ltd., is now and was at all times herein mentioned a corporation organized and existing under and by virtue of the laws of Scotland, and at all times herein mentioned said corporation was and is now engaged in the business of insurance against loss [3] or damage, or anything out of liability; that said corporation is and was at all the times herein mentioned, duly authorized and licensed to do business in the State of California, and having its principal place of business within the State of California, in the City and County of San Francisco.

The next paragraph is also admitted, that Defendants Charles Gromer Dickinson and Doris May Dickinson are citizens of the State of California, and reside in the City of Chico, County of Butte, in said State; that Defendant William Kemp is a citizen of the State of California, and resides in the Town of Yuba City, County of Sutter, said State; that Defendant L. K. Fereva is a citizen of the State of California, and resides in the City of Lincoln, County of Placer, said State.

The next sections are also admitted:

“3. That the amount in controversy, exclusive of interest and costs, exceeds the sum of \$3,000.

“4. That this suit is brought under and pursuant to the Federal Declaratory Judgment Act,”——

citing it.

“5. That on or about the 6th day of December, 1939, plaintiff issued a policy of automobile insurance to Defendant L. K. Fereva; that the policy period was from December 16, 1939, to December 16, 1940, and said policy was in effect during all of said period; that in said policy plaintiff agreed with Defendant L. K. Fereva, individually, and doing business under the firm name and style of Fereva Chevrolet Company, to pay on behalf of said Defendant L. K. Fereva, subject to the limits of liability, exclusions, conditions, and other terms of said policy, all sums not exceeding \$7,500 for each person, [4] and not exceeding \$30,000 for each accident, which said Defendant L. K. Fereva should become obliged to pay by reason of the liability imposed upon him by law for damages, including damages for care and loss of services because of bodily injury sustained by any person or persons caused by accident, and arising out of the ownership, maintenance, and use of a certain automobile covered by said policy of automobile insurance, to-wit, A Cadillac tow car, year 1924; that reference is hereby expressly made to said exhibit, and the same is hereby made a part hereof.”

Counsel, will you kindly produce the policy?

(Document handed to Mr. Scott.)

Mr. Scott: Might we digress from the admissions in the pleadings, your Honor, to offer in evidence policy of automobile insurance, No. AG 1556, issued to L. K. Fereva, DBA—that is, doing business as Fereva Chevrolet Co., expiring December 16, 1940?

Mr. Goldstein: No objection.

The Court: Admitted.

(The insurance policy referred to was marked Plaintiff's Exhibit No. 1 in evidence.)

PLAINTIFF'S EXHIBIT NO. 1

National Standard Garage
Liability Policy

GA

Service That Excels

Established 1885

General Accident Fire and Life Assurance
Corporation, Limited
(A Stock Insurance Company)

United States Offices

Fourth and Walnut Streets
Philadelphia

Policy No. AG 1556

Issued to

L. K. Fereva, d.b.a. Fereva Chevrolet Co.
Expires December 16th, 1940

IMPORTANT

Please Read Your Policy

Plaintiff's Exhibit No. 1—(Continued)

GENERAL ACCIDENT
FIRE AND LIFE
ASSURANCE CORPORATION, LIMITED

Declarations

Item 1. Name of insured L. K. Fereva doing business as Fereva Chevrolet Co.

Address Lincoln, Placer County, California
(No., street, town, county, state)

Location of insured premises (Enter "same" if same location as above address.) Same

The named insured is (individual, corporation or partnership) Individual

Item 2. Policy Period: From December 16, 1939 to December 16, 1940 12.01 a. m., standard time at the address of the named insured as stated herein.

Item 3. The insurance afforded is only with respect to such and so many of the following coverages and divisions thereunder as are indicated by specific premium charge or charges. The limit of the corporation's liability against each such coverage shall be as stated herein, subject to all of the terms of this policy having reference thereto.

Plaintiff's Exhibit No. 1—(Continued)

Operations	Coverages	Limits of Liability	Estimated Total Remuneration	Rates per \$100	Estimated Advance Premiums
Division 1					Minimum
Automobile Dealer or Automobile Repair Shop	<div> <div> Bodily A. Injury Liability </div> <div> \$ 7500.00 each person \$30000.00 each accident </div> </div>		\$5000.00	1.64	\$101.20
	<div> <div>Property B. Damage Liability</div> <div> \$ 5000.00 each accident </div> </div>			.35	\$ 25.00
Division 2					
Automobile Storage Garage or Automobile Service Station	<div> <div> Bodily A. Injury Liability </div> <div> \$ each person \$ each accident </div> </div>				\$ none
	<div> <div>Property B. Damage Liability</div> <div> \$ each accident </div> </div>				\$ none
	Endorsement attached D. O. C.				Lia. \$ 1.72 P.D. \$.50
	Endorsement attached				\$ none
Minimum Premiums Division 1 or 2	Coverage A \$101.20	Coverage B \$ 25.00	Total Estimated Advance Premium for Policy		\$128.42

Plaintiff's Exhibit No. 1—(Continued)

Item 4. The named insured is conducting no other business operations at this or any other location not herein designated, except as herein stated: Auto Sales & Service & Garage

Item 5. No insurer has canceled any similar insurance issued to the named insured during the past year, except as herein stated: No Exceptions

Date and place of issue 12/6/39, S.F., Cal.

Renewal of policy number AG-991262

Countersigned by WENTZ & ERLIN
By GEO. D. KEIL.

General Accident Fire and Life Assurance
Corporation, Limited
Of Perth, Scotland

(A Stock Insurance Company, Herein Called
the Corporation)

Does Hereby Agree with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and of the statements contained in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

Insuring Agreements

I. Coverage A—Bodily Injury Liability

To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages,

Plaintiff's Exhibit No. 1—(Continued)

including damages for care and loss of services, because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, caused by accident and arising out of such of the operations hereinafter defined as are indicated by specific premium charge or charges in item 3 of the declarations.

Coverage B—Property Damage Liability

To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of such of the operations hereinafter defined as are indicated by specific premium charge or charges in item 3 of the declarations.

Definition of Operations

Division 1. Automobile Dealer or Automobile Repair Shop. The ownership, maintenance, occupation or use of the premises herein designated, including the public ways immediately adjoining, for the purpose of an automobile dealer or automobile repair shop, and all operations either on the premises or elsewhere which are necessary and incidental thereto, including repairs of automobiles or their parts, and ordinary repairs of buildings on the premises and the mechanical equipment thereof; and the ownership, maintenance or use of any automobile for any purpose in connection with the above defined operations, and also for pleasure use.

Plaintiff's Exhibit No. 1—(Continued)

Division 2. Automobile Storage Garage or Automobile Service Station. The ownership, maintenance, occupation or use of the premises herein designated, including the public ways immediately adjoining, for the purpose of an automobile storage garage or automobile service station, and all operations either on the premises or elsewhere which are necessary and incidental thereto, including ordinary repairs of buildings on the premises and the mechanical equipment thereof; and the use of any automobile for any purpose in connection with the above defined operations.

II. Defense, Settlement, Supplementary Payments. It is further agreed that as respects insurance afforded by this policy the corporation shall

(a) defend in his name and behalf any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the corporation shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the corporation;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all costs taxed against the insured in any such suit, all expenses incurred by the corporation,

Plaintiff's Exhibit No. 1—(Continued)

all interest accruing after entry of judgment until the corporation has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the corporation's liability thereon, and expenses incurred by the insured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

The corporation agrees to pay the amounts incurred under divisions (a) and (b) of this section in addition to the applicable limit of liability of this policy.

III. Definition of "Insured". The unqualified word "insured" wherever used includes not only the named insured but also any partner thereof, if the named insured is a partnership, or any executive officer thereof, if the named insured is a corporation, provided such partner or officer is active in the declared operations. The provisions of this paragraph do not apply:

(a) to any partner of the named insured with respect to bodily injury to or death of any partner thereof;

(b) to any executive officer of the named insured with respect to any action brought against such officer because of bodily injury to or death of another employee of the named insured injured in the course of such employment;

(c) to any executive officer with respect to any automobile owned by such officer or by any other

Plaintiff's Exhibit No. 1—(Continued)
executive officer of the named insured or by a member of the family of any such person.

IV. Policy Period, Territory. This policy applies only to accidents which occur during the policy period within the United States of America, Canada or Newfoundland.

Exclusions

This policy does not apply:

(a) to any automobile while used for carrying persons or property of others for a charge or while rented under contract or leased;

(b) under division 1 of the Definition of Operations, to any automobile owned or hired by the insured and used as a haulaway for the conveyance of automobiles or used for the wholesale or retail delivery of fuel oil or the wholesale delivery of gasoline; or to the ownership, maintenance or use for pleasure purposes of any automobile not owned by or in charge of the named insured for use principally in such operations;

(c) under division 2 of the Definition of Operations, (1) to any automobile owned, hired or registered by the named insured or by a partner thereof if the named insured is a partnership; (2) to the possession, consumption or use, elsewhere than upon the premises herein designated of any article manufactured, sold or distributed by the insured;

(d) to such injury or destruction caused by the ownership, maintenance or use of (1) any elevator, its car, platform, shaft, hoistway or appliances; (2)

Plaintiff's Exhibit No. 1—(Continued)

any mechanical or hydraulic hoist for raising or lowering automobiles or other materials from one floor, balcony, or platform to another; (3) any air or water craft; or caused by making additions to, structural alterations in, or the construction or demolition in whole or in part of any building, structure, elevator, mechanical or hydraulic hoist;

(e) to such injury or destruction caused by any person under the age of fourteen years, or by any person employed by the insured in violation of any state, federal or provincial law as to age, or with respect to any automobile while being operated by any person under the age of fourteen years, or by any person in violation of any state, federal or provincial law as to age applicable to such person or to his occupation, or by any person in any prearranged race or competitive speed test;

(f) to liability assumed by the insured under any contract or agreement;

(g) to any partner, if the named insured is a partnership, with respect to any automobile owned by such partner or by any other partner of the named insured or by a member of the family of any such person; or, if the named insured is an individual, to any automobile owned by a member of the named insured's family;

(h) under coverage A, to bodily injury to or death of any employee of the insured while engaged in the business of the insured, or to any obligation for which the insured may be held liable under any workmen's compensation law;

Plaintiff's Exhibit No. 1—(Continued)

(i) under coverage A, to bodily injury to or death of any person from an accident while such person is in any automobile of the commercial or truck type, the use of which is insured by this policy, if more than eight persons are then in the automobile and it is being used for purposes other than the business of the named insured;

(j) under coverage B, to property owned by, rented to, leased to, in charge of, or transported by the insured.

Conditions

(The conditions, except condition 4, apply to all coverages. Condition 4 applies only to coverage A)

1. Premium. The premiums are based (a) on the entire remuneration earned during the policy period by all employees of the named insured engaged in the declared operations, except as hereinafter stated, and (b) on the remuneration earned during the policy period by the proprietor or proprietors, if the named insured is an individual or partnership, or by any executive officer, if the named insured is a corporation, and by salesmen and general managers on the basis of a fixed amount of \$2,000 per annum for each proprietor or executive officer active in such operations and for each salesman and each general manager.

Upon termination of this policy, the amount of the remuneration earned by proprietors, executive officers and all employees, during the policy period, shall be exhibited to the corporation and the earned

Plaintiff's Exhibit No. 1—(Continued)

premiums computed at the rates and under the terms of this policy. If the earned premiums thus computed are greater than the advance premiums paid, the named insured shall pay the additional amount to the corporation; if less, the corporation shall return to the named insured the unearned portion but, except in event of cancelation, the corporation shall retain the minimum premiums stated in this policy.

2. Inspection. The corporation shall be permitted to inspect the insured premises and to examine the insured's books and records at any time during the policy period and any extension thereof and within one year after the final termination of this policy, as far as they relate to the premium basis of this policy.

3. Automobile Defined. Except where specifically stated to the contrary, the word "automobile" wherever used in this policy shall mean a motor vehicle, trailer or semitrailer of any type; and the word "trailer" shall include semitrailer. The terms of this policy shall apply separately to each automobile insured hereunder but as respects limits of bodily injury liability and property damage liability a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile.

4. Limits of Liability. Coverage A. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the cor-

Plaintiff's Exhibit No. 1—(Continued)

poration's liability for all damages, including damages for care and loss of services, arising out of bodily injury, including death at any time resulting therefrom, sustained by one person in any one accident; the limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the corporation's liability for all damages, including damages for care and loss of services, arising out of bodily injury, including death at any time resulting therefrom, sustained by two or more persons in any one accident.

5. Limits of Liability. The inclusion herein of more than one insured shall not operate to increase the limits of the corporation's liability.

6. Financial Responsibility Laws. Such insurance as is afforded by this policy for bodily injury liability or property damage liability with respect to any automobile owned by the named insured shall comply with the provisions of the motor vehicle financial responsibility law of any state or province which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of such automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the corporation for any payment made by the corporation which it would not have been obligated to make under the terms of

Plaintiff's Exhibit No. 1—(Continued)

this policy except for the agreement contained in this paragraph.

7. Notice of Accident—Claim or Suit. Upon the occurrence of an accident written notice shall be given by or on behalf of the insured to the corporation or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses. If claim is made or suit is brought against the insured, the insured shall immediately forward to the corporation every demand, notice, summons or other process received by him or his representative.

8. Assistance and Cooperation of the Insured. The insured shall cooperate with the corporation and, upon the corporation's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the corporation shall reimburse the insured for expenses, other than loss of earnings, incurred at the corporation's request. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

Plaintiff's Exhibit No. 1—(Continued)

9. **Action Against Corporation.** No action shall lie against the corporation unless, as a condition precedent thereto, the insured shall have fully complied with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the corporation.

Any person or his legal representative who has secured such judgment or written agreement shall thereafter be entitled to recover under the terms of this policy in the same manner and to the same extent as the insured. Nothing contained in this policy shall give any person or organization any right to join the corporation as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the corporation of any of its obligations hereunder.

10. **Other Insurance.** If the insured has other insurance against a loss covered by this policy the corporation shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

11. **Subrogation.** In the event of any payment under this policy the corporation shall be subrogated

Plaintiff's Exhibit No. 1—(Continued)

to all the insured's rights of recovery therefor and the insured shall execute all papers required and shall do everything that may be necessary to secure such rights.

12. Changes. No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the corporation from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by the United States Manager.

13. Assignment. No assignment of interest under this policy shall bind the corporation until its consent is endorsed hereon; if, however, the named insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless canceled, shall, if written notice be given to the corporation within thirty days after the date of such death or adjudication, cover the named insured's legal representative as the named insured.

14. Cancellation. This policy may be canceled by the named insured by mailing written notice to the corporation stating when thereafter such cancellation shall be effective. This policy may be canceled by the corporation by mailing written notice to the named insured at the address shown in this policy stating when not less than five days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and

Plaintiff's Exhibit No. 1—(Continued)

the insurance under this policy as aforesaid shall end on the effective date and hour of cancelation stated in the notice. Delivery of such written notice either by the named insured or by the corporation shall be equivalent to mailing. The corporation's check or the check of its representative similarly mailed or delivered shall be sufficient tender of any refund of premium due to the named insured.

If the named insured cancels, earned premiums shall be computed in accordance with the customary short rate table but such premiums shall not be less than the short rate portion of the minimum premiums stated in the declarations. If the corporation cancels, earned premiums shall be computed pro rata. Remuneration for the policy period stated in the declarations shall be computed upon the basis of remuneration to the date of cancelation. Premium adjustment in accordance with the foregoing shall be made upon computation of the earned premiums.

15. **Declarations.** By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between himself and the corporation or any of its agents relating to this insurance.

In witness whereof, the General Accident Fire and Life Assurance Corporation, Limited, has

Plaintiff's Exhibit No. 1—(Continued)
caused this policy to be signed by its United States Manager at Philadelphia, Pa., and countersigned on the declarations page by a duly authorized agent of the corporation.

JAS. F. MITCHELL

United States Manager

ENDORSEMENT

Not Valid Unless Countersigned By a Duly Authorized Representative of the Corporation

December 16th, 1939

In Consideration of the Premium at which this policy is written it is understood and agreed that coverage under this policy does not apply to any automobile or automobiles already purchased; to be purchased and/or consigned to the insured, which may be driven under their own power or towed from any point outside the State of California to any location within the State of California.

Attached to and forming part of Policy No. AG-1556, issued by the General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, to L. K. Fereva doing business as Fereva Chevrolet Co.

JAS. F. MITCHELL

United States Manager

Countersigned at San Francisco, Cal.

Date of Countersignature December 6th, 1939

(Not Effective Date of Endorsement)

WENTZ & ERLIN Agent.

By GEO. D. KEIL

Plaintiff's Exhibit No. 1—(Continued)

ENDORSEMENT

Not Valid Unless Countersigned By a Duly Authorized Representative of the Corporation

Drive Other Private Passenger
Automobiles—Limited Form

December 16th, 1939

In consideration of the payment of an additional premium included in the policy it is agreed that such insurance as is afforded by the policy for Bodily Injury Liability and for Property Damage Liability also applies subject to the following Provisions:

Divisional. To L. K. Fereva, with respect to his operation of or presence in any private passenger automobile, provided:

a. such use is "Pleasure and Business" as defined in the policy; and

b. such use is with the permission of any person having the right to grant such permission; and

c. the automobile is not (1) owned in full or in part by, or registered in the name of, or hired by L. K. Fereva or any member of his household, or (2) furnished L. K. Fereva for his regular use by his employer or by any other person or organization; and

d. the insurance afforded under this division shall be excess insurance over any other valid and collectible insurance available to L. K. Fereva, either as an insured under a policy

Plaintiff's Exhibit No. 1—(Continued)
applicable with respect to the automobile or otherwise, against a loss covered under this division.

This endorsement becomes effective at 12:01 A.M. Standard Time, December 16, 1939. Subject, otherwise, however, to the limits of liability, exclusions, conditions and other terms of this policy.

Attached to and forming part of Policy No. AG-1556, issued by the General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, to L. K. Fereva, d.b.a. Fereva Chevrolet Co.

JAS. F. MITCHELL

United States Manager

Countersigned at San Francisco, Cal.

Date of Countersignature December 6th, 1939

(Not Effective Date of Endorsement)

WENTZ & ERLIN Agent.

By GEO. D. KEIL

ENDORSEMENT

Not Valid Unless Countersigned By a Duly Authorized Representative of the Corporation

Drive Other Cars—Private Passenger Automobiles
Limited Form—Relatives

December 16th, 1939

In consideration of the payment of an additional premium included in policy it is agreed that such insurance as is afforded by the policy for Bodily

Plaintiff's Exhibit No. 1—(Continued)

Injury Liability and for Property Damage Liability also applies subject to the following provisions:

To Bessie K. Fereva as an insured, if a relative of and a resident in the household of L. K. Fereva with respect to such relative's operation of or presence in any private passenger automobile, provided:

(a) such use is personal, pleasure and business use; and

(b) such use is with the permission of any person having the right to grant such permission, and

(c) the automobile is not (1) owned in full or in part by, or registered in the name of, or hired by the named insured or by such relative or any member of the household of L. K. Fereva, or (2) furnished such relative for his regular use by his employer or by any other person or organization; and

(d) the insurance afforded under this endorsement shall be excess insurance over any other valid and collectible insurance available to such relative, either as an insured under a policy applicable with respect to the automobile or otherwise, against a loss covered under this division.

This endorsement becomes effective at 12:01 A.M. Standard Time December 16th, 1939. Subject, otherwise, however, to the limits of liability, exclusions, conditions and other terms of this policy.

Attached to and forming part of Policy No. AG-1556, issued by the General Accident Fire and

Plaintiff's Exhibit No. 1—(Continued)

Life Assurance Corporation, Ltd., of Perth, Scotland, to L. K. Fereva, d.b.a. Fereva Chevrolet Co.

JAS. F. MITCHELL

United States Manager

Countersigned at San Francisco, Cal.

Date of Countersignature December 6th, 1939

(Not Effective Date of Endorsement)

WENTZ & ERLIN Agent.

By GEO. D. KEIL

SHORT RATE TABLE

	Percentage of Annual Prem.
1 day	2
2 days.....	4
3 "	5
4 "	6
5 "	7
6 "	8
7 "	9
8 "	9
9 "	10
10 "	10
11 "	11
12 "	12
13 "	13
14 "	13
15 "	14
16 "	14
17 "	15
18 "	16
19 "	16
20 "	17
25 "	19
30 "	20
35 "	23

Plaintiff's Exhibit No. 1—(Continued)

		Percentage of Annual Prem.
40	" ..	26
45	" ..	27
50	" ..	28
55	" ..	29
60	" ..	30
65	" ..	33
70	" ..	36
75	" ..	37
80	" ..	38
85	" ..	39
90	" (three months)	40
105	" ..	45
120	" (four months)	50
135	" ..	55
150	" (five months)	60
165	" ..	65
180	" (six months)	70
195	" ..	73
210	" (seven months)	75
225	" ..	78
240	" (eight months)	80
255	" ..	83
270	" (nine months)	85
285	" ..	88
300	" (ten months)	90
315	" ..	93
330	" (eleven months)	95
360	" (twelve months)	100

[Endorsed]: Filed Dec. 22, 1941.

Mr. Scott: I think it might save time if I read to the jury certain portions of the policy—or does your Honor desire to have this all read? It is somewhat lengthy.

Mr. Goldstein: Wouldn't it be advisable to have

the stipulated facts in first? In other words, go right through the complaint?

Mr. Scott: I think that probably would be ship-shape. We will proceed, then, with the further admissions in the complaint.

Paragraph VI. This portion of paragraph VI is admitted: [5]

“That on the 25th day of February, 1940, at the hour of approximately 6:15 o'clock a. m. of said day, an accident occurred on U. S. Highway 99-E, between the cities of Roseville and Lincoln, Placer County, California, at a point approximately two miles south of the City of Lincoln; that at that time and place Defendant L. K. Fereva controlled and was using upon the shoulder of said U. S. Highway 99-E, the automobile tow truck covered by said policy of insurance; that in said accident Defendants Charles Gromer Dickinson, Doris May Dickinson and William Kemp received and sustained certain injuries to person and property.”

The remaining portion of the paragraph is denied.

Mr. Goldstein: Denied.

Mr. Scott: The next fact admitted is that contained in paragraph VII:

“That on or about the 12th day of April, 1940, Defendants Doris May Dickinson and Charles Gromer Dickinson commenced an action for damages against Defendant L. K. Fe-

reva in the Superior Court of the State of California, in and for the County of Placer, entitled, 'Doris May Dickinson and Charles Gromer Dickinson, husband and wife, Plaintiffs, versus L. K. Fereva, doing business under the firm name and style of "Fereva Chevrolet Co.," Richard Roe Company, a corporation, Henry Roe Company, a copartnership, John Doe I, John Doe II, and John Doe III, Defendants,' and numbered therein 11844; that a true copy of the complaint in said action is attached hereto and marked Exhibit B; that specific reference is hereby made to said Exhibit B, and the same is hereby made a part [6] hereof."

May it be stipulated that the Exhibit B attached to the complaint be deemed in evidence?

Mr. Goldstein: We have no objection, and it may be considered for all purposes as Plaintiff's Exhibit No. 2.

Mr Scott: Yes.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 2.)

Mr. Scott: The following paragraph is admitted:

"That on or about the 30th day of November, 1940, Defendant William Kemp commenced an action for damages against Defendant L. K. Fereva, in the Superior Court of the State of California, in and for the County of Butte, entitled, 'William Kemp, Plaintiff, versus K. L. Fereva, individually, and

doing business under the firm name and style of Fereva Chevrolet Company, Charles Dickinson, First Doe, Second Doe, and Third Doe, a corporation, Defendants,' and numbered therein 18256; that a true copy of the complaint in said action is attached hereto and marked Exhibit C; that specific reference is hereby made to said Exhibit C, and the same is hereby made a part hereof."

The same stipulation?

Mr. Goldstein: The same stipulation: the complaint in the Kemp case may be considered as Plaintiff's Exhibit No. 3.

(The document referred to was marked Plaintiff's Exhibit No. 3 in evidence.)

Mr. Scott (reading): "That said action so brought in the County of Placer by said Doris May Dickinson and Charles Gromer Dickinson came on regularly for trial before the [7] Court sitting with a jury; that thereafter, and on or about the 6th day of December, 1940, judgment was duly given, made and entered on the verdict of said jury in favor of said Doris May Dickinson and Charles Gromer Dickinson, the plaintiffs therein, and against said L. K. Fereva, doing business under the firm name and style of Fereva Chevrolet Co., defendant, in the sum of \$5.000, and costs of suit."

Mr. Goldstein: Pardon me.

If the Court please, in order to save time and obviate the necessity of my referring to the cross-complaint. I would like to have Mr. Scott stipu-

late in reference to that paragraph that the judgment was actually entered for \$5,000 principal and \$265.65 costs, and that will take care of this paragraph and have an admission as to the factual situation regarding that judgment.

Mr. Scott: What did you say the cost item was?

Mr. Goldstein: \$265.65.

Mr. Scott: May I ask, Mr. Goldstein, is that the correct amount?

Mr. Goldstein: That is the correct amount.

Mr. Scott: I will accept that amendment to the stipulation. Then there is this further admission:

“That the said action brought in the County of Butte by said Defendant William Kemp, plaintiff therein, against said Defendant L. K. Fereva, in which said William Kemp seeks damages in the sum of \$7,905, and his costs of suit, is still pending therein, and has not yet been brought to trial.”

Mr. Goldstein: So stipulated.

Mr. Scott: Paragraph XI. May I call it to your Honor's attention, if it is convenient? [8]

The Court: Yes.

Mr. Scott: Paragraph XI seems to me to rather embody merely a statement of legal controversy between us, which would hardly be—although it is admitted by the defendants to be correct, it hardly comes within the scope of factual matters which may go in, but may I reserve any comment on that? At present I think it is improper as a statement of fact. The same would be true as to XII, the portion thereof which has not been denied.

Mr. Goldstein: As I understand, if the Court please, paragraphs XI, XII, and XIII, pertain to certain conclusions from the foregoing facts, so I think it is a matter to be argued before the jury on the facts presented.

Mr. Scott: Yes.

The Court: Well, Mr. Scott reserved the right to do that.

Mr. Scott: I sometimes must admit my pleadings do not look exactly factual when they do get to the test of the trial.

May I now state in general the terms of the policy with the General Accident?

The Court: Yes.

Mr. Scott: This policy introduced in evidence now and marked Exhibit I contains the following salient features—we reserve the right, if necessary, to read the remainder, your Honor—by which the General Accident Fire and Life Assurance Corporation insures L. K. Fereva, doing business as Fereva Chevrolet Co., address Lincoln, Placer County, California, the insured named is an individual; the policy period is from December 16, 1939, to December 16, 1940. The coverage: Division 1, Operations, automobile dealer or automobile repair shop. Coverage A, bodily injury liability, \$7,500 for each person, \$30,000 for each accident. Estimated total remuneration, \$5,000. Rate, \$1.64. [9] Estimated advance premiums, \$101.20. Property damage liability under Coverage B, \$5,000 for each accident, minimum premium \$25.00.

It is declared that the named insured is conduct-

ing no other business operations at this or any other location not herein designated, except as herein stated: Auto sales and service garage.

Attached to the policy are two endorsements, dated December 16, 1939, neither of which particularly affect the issues in this case.

Mr. Goldstein: Have no bearing upon the issues.

Mr. Scott: Have no bearing upon the issues.

The insuring provisions of the policy contain the following:

“General Accident Fire and Life Assurance Corporation does hereby agree with the insured named in the declarations made a part hereof, in consideration of the payment of the premium and of the statements contained in the declarations and subject to the limits of liability, exclusions, conditions, and other terms of this policy”——

Then follow the insuring agreements: Coverage A, against bodily injury liability, and B, against property damage; the exclusions, which are not relevant here, and the conditions, among which, Condition 7 reads as follows:

“7. Notice of accident, claim or suit. Upon the occurrence of an accident written notice shall be given by or on behalf of the insured to the corporation, or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured, and also reasonably obtainable information respecting the time, place, and cir-

cumstances of the accident, the names and addresses of the injured, and of [10] available witnesses. If claim is made or suit is brought against the insured, the insured shall immediately forward to the corporation every demand, notice, summons, or other process received by him or his representative."

The Court: It is twelve o'clock. Ladies and gentlemen of the jury, we will not recess until two o'clock this afternoon. Before doing so the Court admonishes you, and each of you, not to discuss or converse with each other or anyone else on any point or any fact connected with the case, and that you are not to form or express an opinion thereon until the case is finally submitted to you.

Will counsel stipulate that instead of repeating the admonition verbatim in the future, I may refer to the admonition heretofore given?

Mr. Scott: So stipulated.

Mr. Goldstein: So stipulated.

The Court: The witnesses will be instructed to return here at two o'clock without further order of the Court.

(Thereupon a recess was taken until 2:00 o'clock p. m.) [11]

The Court: You may proceed.

Mr. Scott: Condition 12 of the policy reads as follows: "Changes. No notice to any agent, or knowledge possessed by any agent or by any other

person shall be held to effect a waiver or change in any part of this policy"—

The Court: Do you ladies and gentlemen hear Mr. Scott plainly?

A Juror: Not very well.

The Court: I suggest you stand up by the witness chair.

Mr. Scott: I am sorry, but I don't speak as well as I used to.

"To notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy, nor estop the corporation from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by the United States Manager."

The policy, on the face of it, is marked "Counter-signed by Wentz & Erlin, by George Klein"—

Mr. Goldstein: By whom, Mr. Scott?

Mr. Scott: Klein—K-l-e-i-n.

Mr. Goldstein: George Keil, isn't it? [12]

Mr. Scott: Keil—K-e-i-l; pardon me.

And each of the endorsements—there are three of them—is countersigned "Wentz & Erlin, Agent, by George Keil," and it will be noted that there is not on the back of the policy, or anywhere else upon the policy, any reference whatever to Mr. Urquhart, either by label, endorsement, or otherwise.

Mr. Goldstein: Well, we concede that, your

Honor. We stipulate that Mr. Urquhart's name does not appear on the policy, any portion of it.

Mr. Scott: Mr. Fereva, will you take the stand, please?

LEON KARL FEREVA,

Called for the Plaintiff under Section 2055, C. C. P.; Sworn.

The Clerk: Q. Will you please state your full name to the Court and jury?

A. Leon Karl Fereva.

Mr. Scott: Your Honor, we are calling the defendant under Section 2055 of the Code of Civil Procedure of the State of California. And may I explain the reason for that to the jury, your Honor?

The Court: You may.

Mr. Goldstein: If the Court please, I am going to object. All that he can say is that he called him under Section 2055, and he is the same as under cross examination. That is one of the provisions of law pertaining to a witness. That is the only thing he can say. That is exactly what he did—he called Mr. Fereva as an adverse witness.

The Court: I think that is sufficient.

Mr. Scott: It is. If your Honor pleases, that is what I intended to tell the jury. I thank counsel for telling them for me. [13]

(Testimony of Leon Karl Fereva.)

Direct Examination

By Mr. Scott:

Q. Your name, please?

A. Leon Karl Fereva.

Q. Where do you live?

A. In Lincoln.

Q. What county? A. Placer County.

Q. What is your occupation?

A. I have none at present.

Q. What was your occupation?

A. Automobile dealer.

Q. And where did you conduct your business?

A. In Lincoln, Placer County.

Q. For how long?

A. A little over 14 years.

Q. And in connection with that business did you carry on any other occupation?

A. Why, a little ranching on the side, and insurance; that is about all.

Q. You have sold automobiles?

A. Yes, sir.

Q. Had a garage, repair shop?

A. Yes, sir.

Q. And operated a tow car? A. Yes, sir.

Q. Now, Mr. Fereva, you were the insured under this policy of insurance that has been introduced in evidence, were you not? A. Yes, sir.

Q. And that policy of insurance was a renewal of previous policies? A. Yes, sir.

Q. For how many years, do you recall?

(Testimony of Leon Karl Fereva.)

A. Well, it ran from either 1928 or 1929 until 1940.

Q. In addition to your garage business, I assume you bought and sold automobiles?

A. Many.

Q. And did you also act as a soliciting agent for insurance company, or companies?

A. I did.

Mr. Goldstein: If the Court please, I am going to object to the question on the ground that it is too broad, and furthermore it is not a proper question to be put to the witness, because [14] nothing appears that he knows what a soliciting agent is. You can ask him what he did, what his duties were, but to ask him that question is improper, and I am going to object to it. In other words, this witness is an adverse witness to us also, as far as we are concerned. He can't ask him if he is a soliciting agent.

The Court: Reframe your question.

Mr. Scott: Q. Were you licensed as such by the State of California? A. Yes, sir.

Q. Have you the license here?

Mr. Goldstein: I will give you a certified copy of it.

Mr. Scott: Will you, please?

Mr. Goldstein: A certified copy of it (handing document to Mr. Scott).

Mr. Scott: Q. I show you a policy produced by Mr. Goldstein—rather, an agent's license produced by Mr. Goldstein, and certified. May I ask

(Testimony of Leon Karl Fereva.)

you whether that license was issued to you, the original of it? A. Yes, sir.

Mr. Scott: We offer this license, if your Honor pleases, in evidence.

Mr. Goldstein: No objection.

The Court: Admitted.

Mr. Scott: Together with the certificate of the Division of Insurance attached thereto.

Mr. Goldstein: No objection.

(The documents referred to were marked Plaintiff's Exhibit No. 4.)

Mr. Scott: Might I read it, if your Honor pleases?

The Court: You may.

Mr. Scott (reading: "State of California Insurance Agent's License. Expires July 1, 1940. Copy. [15]

"This is to certify that L. K. Fereva, whose principal office is located at (City or Town) Lincoln, County of Placer, California.

"Having complied with the requirements of the law, is hereby licensed as an insurance agent to solicit, negotiate, or effect contracts of insurance (except life and interinsurance) on behalf of insurers who have filed with the Commissioner an appointment of said licensee as their agent. Such transaction may be had only by and through the following designated persons: L. K. Fereva.

"Witness my hand and seal of office at San

(Testimony of Leon Karl Fereva.)

Francisco, the day and year written. A. Caminetti, Jr., Insurance Commissioner.

“This license shall remain in full force until July 1, 1940, and is subject to revocation or suspension by the Insurance Commissioner in the manner provided by law.

“This license does not authorize any transaction of insurance except on behalf of insurers who have filed appointments as above stated.”

Then, in the margin:

“Please take note of the following:

“Except when performed by a surplus line broker, the following acts are misdemeanors when done in this State: (A) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this State.

(B) In any manner advertising a nonadmitted insurer in this State.

(C) In any other manner aiding a nonadmitted insurer to transact insurance business in this State.”

citing the section—I cannot read it, the print is so small—of [16] the California Insurance Code——

“An agent cannot receive commissions on business not placed with a company for which he is licensed unless he holds a broker’s license.”

citing the applicable section of the Insurance Code.

(Testimony of Leon Karl Fereva.)

Mr. Goldstein: Mr. Scott, you did not read the date of that. That is the only thing——

Mr. Scott: Yes. The date is printed in red, "39" to "40", and the certificate accompanying it shows it was issued July 1, 1939, and expires July 1, 1940.

Q. Now, Mr. Fereva, did you, under that license, solicit any insurance for the General Accident Fire and Life Assurance Company?

A. Why, through my business, yes; through my contracts, I was writing on the contracts I was selling personally, they covered that insurance.

Q. You did not yourself issue or sign any contracts of insurance, did you? A. No, sir.

Q. And had no authority so to do?

Mr. Goldstein: Just a moment. If the Court please, I object to that on the ground it calls for a conclusion of the witness.

The Court: Yes.

Mr. Scott: An agent may testify to his own authority, if your Honor please.

Mr. Goldstein: I disagree with counsel, if your Honor please. That is his conclusion. There are other things which will indicate what his authority was. What he did and how he did it.

Mr. Scott: Nevertheless he is competent to testify as to whether or not he is authorized as an agent to do certain things.

The Court: Proceed.

Mr. Scott: Did your Honor rule? [17]

The Court: Yes.

Mr. Scott: I didn't hear the ruling.

(Testimony of Leon Karl Fereva.)

The Court: The objection is overruled.

Mr. Scott: Will you read the question, Mr. Reporter?

(Question read.)

A. No, sir.

Mr. Scott: Q. You hadn't any blank policies or blank endorsements, or other stationery that would permit you to exercise such authority, is that not true?

The Court: Q. Do you understand the question, Mr. Fereva?

A. Why, forms, yes. If a man wanted a certain type of insurance, these forms were made out and mailed to the agents, yes.

Mr. Goldstein: I didn't hear the last part of the answer.

A. There were forms which, if a man desired property damage and public liability insurance, these forms were filled out and mailed in.

Mr. Scott: These forms were applications?

The Witness: Yes, sir.

Mr. Scott: Q. Upon the filling out of these applications—they would be filled out and given to you and sent by you to the agents, is that correct?

A. Sent by me for the customer.

Q. That was the manner in which you carried on such business that you did for the General Accident Fire and Life Assurance Company?

A. Yes, sir.

Q. That was likewise true, was it not, with ref-

(Testimony of Leon Karl Fereva.)

erence to writing or getting business for the Merchants Fire and the Merchants Auto, is that correct? A. Yes, sir.

Mr. Goldstein: And the Potomac is the other.

Mr. Scott: I was hunting for the Potomac.

Q. And likewise true with reference to the Potomac, is that correct? [18]

A. Yes, sir.

Q. The policies of the General Accident Fire and Life Assurance Corporation were all, as a matter of custom, issued out of the office of Wentz & Erlin in San Francisco, is that not correct?

A. Yes, sir.

Q. Now, while this renewed policy was in effect you had an accident, did you not, in connection with the use of your tow car? A. Yes, sir.

Q. And that happened on February 25 of 1940?

A. Yes, sir.

Q. Early in the morning?

A. Well, near daylight, yes.

Q. Now, you had with you at the time one of your men named Campbell?

A. Yes, my shop foreman.

Q. Your shop foreman. And in this accident a Mr. and Mrs. Charles Gromer Dickinson sustained certain injuries, did they not? A. They did.

Q. And at the same time a Mr. Kemp, one of the defendants herein, sustained other injuries, is that correct? A. Yes, sir.

Q. And following the accident you and Mr.

(Testimony of Leon Karl Fereva.)

Campbell took the injured people, did you not, for medical treatment? A. Yes, sir.

Q. Will you tell me who took who?

A. Why, I took Mr. Kemp to Doctor McCarthy, and Mr. Campbell took Mr. and Mrs. Dickinson to Doctor Dubin.

Q. Now, sometime subsequent to that, in the month of April following, a summons and complaint—the month of April, 1940, a summons and complaint were served upon you in an action entitled Doris May Dickinson and Charles Gromer Dickinson against L. K. Fereva, et al.?

A. Yes, sir.

Q. And I show you what purports to be a copy of that summons and complaint and ask you if that is the copy that was served upon you, [19] as far as you recall? A. Yes, sir, it appears to be.

Mr. Scott: Counsel, might I suggest that this is the copy from which I made the copy which is now in evidence?

Mr. Goldstein: Yes. Just have that marked Exhibit No. 2. It is Exhibit No. 2. It was stipulated this morning that could be introduced as Exhibit No. 2, so you can mark that Exhibit 2.

(The summons and complaint referred to was marked Plaintiff's Exhibit No. 2.)

Mr. Scott: Q. Upon receipt of the summons and complaint what did you forthwith do with it?

A. Why, as near as my recollection, I came to Sacramento, took the matter up with Mr. Urquhart, and he in turn either turned me over to Mr. Hen-

(Testimony of Leon Karl Fereva.)

retty or went over to Mr. Henretty's office with me.

Q. Now, the Mr. Urquhart whom you refer to is the—is he Mr. R. F. Urquhart? A. Yes, sir.

Q. And the Mr. Henretty whom you refer to is Mr. Walter Henretty? A. Yes, sir.

Q. Now, when you went to Mr. Henretty's office——. Might I ask you, did you sign this automobile accident notice (exhibiting to witness)? Before you answer it—pardon me, Mr. Goldstein——

A. Yes, this is my signature.

Mr. Goldstein: If you signed it I have no objection at all. I don't care to see it. Entirely satisfied to have it offered in evidence.

Mr. Scott: We offer it in evidence, if your Honor pleases, and ask it take the exhibit number next in order.

The Court: Admitted.

(The accident notice was marked Plaintiff's Exhibit No. 5.)

AUTOMOBILE ACCIDENT NOTICE

Policy No. AG-1556
 Name of Assured L. K. Fereva dba Fereva Chevrolet Co.
 Business Address of Assured Lincoln, Cal. Telephone No. 64
 Home Address of Assured (If Individual) _____ Telephone No. _____
 Make of Automobile Cadillao H. P. _____ Year 1924 Mfr's No. ?
 Date of Accident February 25, 1940 at 6:45 o'clock A. M.
 Date of payment of last premium _____ day of _____, 19

Injury to Persons	Name of Injured <u>Chas. G. Dickinson, Doris M. Dickinson, Unknown man,</u> Age and Color <u>25-30--white, Abt. 24--white, Abt. 25--white,</u> Full Address <u>General Delivery, Chico, California.</u> Nature of Injuries <u>Dickinson: Cut on forehead about 1 1/2 inches long. Mrs. Dickinson: Probably bruised. Unknown man: Back or pelvic injuries, full extent unknown.</u> Where taken after accident <u>The Dickinsons went home after first aid and unknown man was taken to hospital in Auburn.</u>
Damage to Property of Others	Owner of Property Damaged <u>Charles G. Dickinson had a 1934 Chevrolet Sport sedan badly damaged, and a Packard 2-door sedan, '27 or '28, belonging to a man named Frazier was badly damaged.</u>
Damage to Automobile of Assured	Extent of Damage (approximate) <u>Cable was attached from boom of tow car to Frazier Packard. Though tow car was not struck, the boom, winch and gas tank of tow car were pulled off when Chevrolet struck Packard.</u> Name of Party causing Damage <u>Charles G. Dickinson</u> Full Address <u>General Delivery, Chico, Cal.</u> Car now at <u>Fereva Chevrolet Co., Lincoln, Cal.</u> How long will it remain there? _____
Witnesses:	Name <u>Unknown man (above injured)</u> Address <u>Unknown.</u> Name <u>Orville Campbell</u> Address <u>Fereva Chevrolet Co., Lincoln, Cal.</u> Name _____ Address _____ Name _____ Address _____

Date of Notice April 26, 1940 Signature of Assured _____

Branch Office File No. _____

Home Office File No. _____

(Testimony of Leon Karl Fereva.)

Statement of Person Driving Car at Time
of Accident

(This Information Must Be Given in Detail)

Tow car was not being driven, but was hooked to Packard preparatory to pulling Packard back on highway.

Name

Business AddressTelephone...City...State...

Home Address.....Telephone...City...State...

Driving Experience.....Age.....Licensed?.....

State under whose employ you were at the time of accident mentioned herein, and under whose employ you are

Exact place of accident On U.S. 99E about three
Street or Streets
miles south of Lincoln, Cal.

City State

If at night, what lights were lit? Flare out 300 feet from tow car, two red lights on tow car

Direction and speed of your automobile Stopped off east edge of pavement.

Direction and speed of other automobile or vehicle North—40 to 50 MPH.

Side of street on which each vehicle was at the time of the accident and distance from the nearest curb Both cars were off east edge of pavement.

(Testimony of Leon Karl Fereva.)

State about signals given by either party, blowing of horns, etc.....

Number of passengers and their names in your car
None.

Number of passengers and their names in other car
Mr. and Mrs. Dickinson and infant child.

Condition of the weather Cloudy, drizzling, day just breaking.

Kind of pavement and description of its condition
.....

Remarks, if any made, by people in either vehicle at time of accident, or immediately after the accident
.....

State whether or not assured's car was in good running order and under complete control of the chauffeur or driver Yes State under whose direction car was being driven at the time of the accident and where the car was going from and to Tow car was about to pull another car back onto road.

Give your honest opinion as to who was at fault
Charles G. Dickinson.

Who ordered you to operate the car on the trip on which the accident occurred? What orders were given to you at said time? If no orders were given to you, state fully why you had the car out Traffic Officer had asked that tow car go out to pull in car of drunken driver, who had gotten off the road.

(Testimony of Leon Karl Fereva.)

Exact description of accident This drunk's car was about 20 feet off east edge of pavement and tow car had hooked onto Packard and Orvell Campbell was working winch on tow car, which was completely off east edge of pavement, its nearest point to pavement being two or three feet. I was watching traffic. I had a red flashlight and a white one. I saw the Dickinson car approaching and was about 70 feet south of tow car frantically waving both flashlights. I had to jump out of way, and Dickinson car swerved to right, passing east of tow car and just grazing right leg of Campbell, knocking down this unknown man who was talking to Campbell, and crashing into right rear corner of Packard.

Indicate point of collision.

Date April 26, 1940

Signature L. K. FERREVA

[Endorsed]: Filed Dec. 22, 1941.

Mr. Hogle: What is the date of that, Mr. Scott?

Mr. Scott: I was just coming to that. [20]

Q. You signed that, did you not, on the date it bears, April 26, 1940?

A. When I signed it it had a date, the date was in there, yes.

Q. And at that time you delivered to Mr. Walter Henretty the copy of summons and complaint which are now in evidence?

(Testimony of Leon Karl Fereva.)

A. Either I delivered it, or Mr. Urquhart, one of us; probably he delivered it.

Q. May I ask, did you thereafter receive by registered mail a letter of which this is the carbon copy, bearing date April 29, 1940, and attached to a return registry receipt (exhibiting to witness)?

A. Yes, sir.

Mr. Hogle: May I see that?

(The document was exhibited to Mr. Hogle.)

Mr. Scott: Yes.

Q. And the registry receipt to which I call your attention bears your signature, does it not?

A. Yes, sir.

Q. And was signed by you on May 3, 1940, is that correct

A. Yes, sir.

Q. Calling your attention again to Exhibit 5 introduced in evidence, namely, the document that you signed in Mr. Henretty's office, that is, is it not, the first written notice that you ever gave to the General Accident Insurance Company, or anyone else, in reference to that accident?

A. In writing, yes, as far as I remember.

Q. At the time that you signed that—by the way, you signed that in Mr. Henretty's office, did you not?

A. Well, of that I would not be sure; Mr. Henretty had many papers in my office, and statements, and all that, so I could not say whether I signed it in his office or in my office.

Q. Now, upon the day that you signed that paper, assuming it to [21] have been signed in the

(Testimony of Leon Karl Fereva.)

office of Mr. Henretty in the Bank of America Building in this City, did you state to Mr. Henretty that you did not report the accident earlier because you did not feel it was of enough importance, and because the officers had exonerated you, and that you were greatly surprised to have these papers served upon you the day before? A. No, sir.

Q. Did you make any statement to that effect?

A. Would you read that over again, Mr. Scott?

Q. Surely, Mr. Fereva.

The Court: You might have the witness read the letter.

Mr. Scott: This is a letter from another, and not signed by the witness, your Honor. That is my difficulty. I paraphrased the language.

The Court: Let the reporter read the question.

Mr. Goldstein: You aren't giving the language, Mr. Scott; that is the trouble——

Mr. Scott: Yes, I am giving the language, but I am transferring it back to his language, in the first person.

Mr. Goldstein: You are giving somebody else's language.

Mr. Scott: I am reading from Mr. Henretty's letter repeating the conversation between him and Mr. Fereva.

Mr. Goldstein: Oh, I see.

Mr. Scott: Will you read the question, Mr. Reporter?

(Question read.)

A. Not to my knowledge.

(Testimony of Leon Karl Fereva.)

Mr. Goldstein: Q. What was the answer?

A. Not to my knowledge.

Mr. Scott: If your Honor pleases, I desire to offer in evidence the letter of April 29, 1940, with the registry receipt attached, and ask that it take its place next in order among the [22] exhibits.

Mr. Goldstein: No objection.

The Court: Admitted.

(The letter and registry receipt referred to were marked Plaintiff's Exhibit No. 6.)

Mr. Scott: May I have permission to read the letter, your Honor?

The Court: Yes.

Mr. Scott (reading): "April 29, 1940

"Mr. L. K. Fereva

"c/o Fereva Chevrolet Co.

"Lincoln, California

"Dear Sir:

"Re—L. K. Fereva-Chas. Dickinson, et al.

"This will acknowledge receipt of summons and complaint in an action brought against you by Doris May Dickinson to recover damages for personal injuries sustained by her in an accident which is alleged to have occurred on or about February 25, 1940, on U. S. Highway 99E between the cities of Roseville and Lincoln, Placer County, California, at a point approximately two miles south of the City of Lincoln. Said plaintiff Doris Dickinson demands damages in the amount of \$10,000.00 which is in

(Testimony of Leon Karl Fereva.)

excess of the limit fixed by your policy for one person.

“Charles Dickinson, husband of said plaintiff is also a plaintiff in said action and demands damages for personal injuries and damage to property and consequential damage.

“The complaint in said action alleges that the accident occurred on February 25, 1940. I beg to advise that we are accepting said summons and complaint and will handle [23] the defense of said action under a full reservation of all our rights under your policy because of your failure to report the accident promptly and in accordance with policy provisions. Any action heretofore or hereafter taken in the handling or investigation of said accident or suit is not to be construed as a waiver of the rights hereby reserved. Further objections are reserved.

“Said action is pending in the Superior Court of the State of California in and for the County of Placer. The defense thereof has been referred to Gerald M. Desmond, Attorney at law, Capital National Bank Bldg., Sacramento, with whom I would ask you to cooperate in the defense of the action.

“You may, if you desire, associate your personal attorney at your own cost and expense, with Mr. Desmond in the trial of said action.

“Yours very truly,”——

Q. That was signed “William F. Murray,” was it not? A. I think it was, yes.

(Testimony of Leon Karl Fereva.)

Mr. Scott (reading): "Manager, Claims Department.

"WFM:S

"Registered."

And attached to it is the registry return receipt.

Q. Upon receipt, or after receipt of that letter dated April 29, 1940, Mr. Gerald M. Desmond acted, did he not, as your attorney in the defense of the Dickinson action? A. Yes, sir.

Q. And the case proceeded to trial in Placer County and resulted in a judgment against you, did it not? A. Yes, sir.

Q. And while that action was in progress another action was commenced against you, was there not, by Mr. William Kemp, an action [24] commenced the 30th of November, 1940, or thereabouts, in the Superior Court in Butte County? A. Yes, sir.

Q. And you thereupon turned that summons and complaint over to Mr. Henretty? A. Yes, sir.

Q. And thereafter you received, did you not, a letter bearing date December 30, 1940, by registered mail, is that correct? A. Yes, sir.

Mr. Scott: We offer this letter in evidence, if your Honor pleases, together with the envelope in which it was enclosed, reading as follows:—

Mr. Goldstein: No objection.

(The letter and envelope referred to were marked Plaintiff's Exhibit No. 7.)

(Testimony of Leon Karl Fereva.)

Mr. Scott (reading): "December 30, 1940

"Mr. L. K. Fereva

"c/o Fereva Chevrolet Co.

"Lincoln, California

"Dear Sir:

"Re—L. K. Fereva-Wm. Kemp L-6286.

"This will acknowledge receipt of summons and complaint in an action brought against you by William Kemp, to recover damages for personal injuries sustained in an accident which is alleged to have occurred on or about February 25, 1940 on U. S. Highway 99E between the cities of Roseville and Lincoln, Placer County, California, at a point approximately 3 miles south of said city of Lincoln, California. Said plaintiff demands damages in the amount of \$7,905.00. The amount is in excess of the limit fixed by your policy for one person.

"The complaint in said action alleges that the accident [25] occurred on February 25, 1940. I beg to advise that we are accepting said summons and complaint and will handle the defense of said action under a full reservation of all our rights under your policy, until such time as you are advised to the contrary, because of your failure to report the accident promptly and in accordance with policy provisions. Any action heretofore or hereafter taken in the handling or investigation of said accident or suit is not to be construed as a waiver of the rights hereby reserved. Further objections are reserved.

"Said action is pending in the Superior Court of the State of California in and for the County of

(Testimony of Leon Karl Fereva.)

Butte. The defense thereof has been referred to Gerald M. Desmond, attorney at law, Capital National Bank Building, Sacramento, California, with whom I would ask you to cooperate in the defense of said action.

“You may if you desire, associate your personal attorney at your own cost and expense, with Mr. Desmond in the trial of said action.

“Yours very truly,

“Mgr. Claims Dept.

“WFM:S

“Registered.”

Q. Now, thereafter, Mr. Desmond continued to represent you, did he not, in both the Dickinson action and the Kemp action? A. Yes, sir.

Q. And that condition continued until January 28, 1941, or thereabouts, is that correct?

A. Yes, sir.

Q. And at that time you received, did you not, this letter in duplicate by registered mail (exhibiting document to witness)? [26]

Mr. Goldstein: The date of that, please, Mr. Scott?

Mr. Scott: January 28, 1941.

Mr. Goldstein: Thank you.

Mr. Scott: Will you check to see if I have the envelope correct on it?

The Witness: Yes.

Mr. Scott: Q. And the answer?

A. Yes, sir.

(Testimony of Leon Karl Fereva.)

Mr. Scott: We now offer in evidence the letter to which I referred, dated January 28, 1941, together with the envelope.

Mr. Goldstein: No objection.

The Court: Admitted.

(The letter and envelope referred to were marked Plaintiff's Exhibit No. 8.)

Mr. Scott (reading): "January 28, 1941"—omitting the letterhead of General Accident——

"William F. Murray

"Manager Claims Department"——

and so forth.

"January 28, 1941

"L. K. Fereva, doing business under the firm name and style of Fereva Chevrolet Co.

"Lincoln, California

"Dear Sir:

"Notice Is Hereby Given to You that General Accident Fire and Life Assurance Corporation, Ltd., denies liability under its policy of insurance heretofore issued to you on or about the 1st day of December, 1939, numbered AG1556, for any loss or damage sustained and incurred, or to be sustained or incurred, by you by reason of accident which [27] occurred on or about the 25th day of February, 1940, in which Charles Gromer Dickinson and Doris May Dickinson and William Kemp claim to have sustained injury and damage to person and property. This denial is based upon your failure to report the accident promptly and in accordance with the policy provisions.

(Testimony of Leon Karl Fereva.)

“You Are Further Notified that in the action brought in the Superior Court of the State of California, in and for the County of Placer by Doris May Dickinson and Charles Gromer Dickinson, husband and wife, against yourself, numbered 11844 in the records and files of the said Court, the Court denied your motion for a new trial on January 23, 1941, and your time within which to appeal from the judgment rendered in said action will expire thirty (30) days thereafter, namely, on or about the 22nd day of February, 1941. Should you desire to appeal from said judgment, Mr. Gerald M. Desmond will furnish substitution to such attorney or attorneys as you may select.

“The action brought by William Kemp against you, in the Superior Court of the State of California, in and for the County of Butte, numbered 18256 in the records and files of said Court, is still pending and has not yet been set for trial. Mr. Gerald M. Desmond is instructed to withdraw from the defense of said action and deliver to you substitution of attorney running to whomsoever you desire to select to represent you.

“Yours very truly,

“GENERAL ACCIDENT AND
& LIFE ASSURANCE COR-
PORATION, LTD.,

“By W. F. MURRAY

“Manager Claims Department.”

(Testimony of Leon Karl Fereva.)

Cross Examination

Mr. Goldstein: Q. You stated to the jury that you had been a resident of Lincoln, Placer County, for how long?

A. Forty-five years, approximately.

Q. And you are married? A. Yes, sir.

Q. Have you a wife and children?

A. A wife and two daughters.

Q. I will ask you to state—what was the nature of your business? A. Automobile dealer.

Q. For what company?

A. The Chevrolet—General Motors.

Q. General Motors. What territory did you have?

A. The territory through Lincoln, Wheatland, Rio Oso, and I don't remember which, either Nicolaus, or Nichols.

Q. Did you have the exclusive agency for those particular portions of Placer County?

A. I did.

Q. You stated in answer to a question by counsel for plaintiff that you had been in business there for about 14 years. Is that about correct?

A. Yes.

Q. And during the time you were in business there you state you [30] were also an insurance agent? A. Yes, sir.

Q. And were you an insurance agent since, let us say, the year 1929—July 1, 1929, up to July 1, 1941? A. Yes, sir.

(Testimony of Leon Karl Fereva.)

Q. And did you do your business exclusively with Wentz & Erlin? A. Yes, sir.

Mr. Goldstein: Now, your Honor, this will save time, I think, if I can get a stipulation from counsel. I have a certified copy of the appointment of Wentz & Erlin as the attorney-in-fact of this company, your Honor, by the United States Manager in New York, and I think it will save considerable time if I can offer it in evidence on this examination, so as to follow it up with what I have. If your Honor pleases, I desire to offer in evidence on behalf of the defendants, Charles Gromer Dickinson and Doris May Dickinson, a certified copy of the power of general agent of Wentz & Erlin issued by the General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, and ask to have it marked as Defendants Dickinsons' Exhibit A.

The Court: Admitted.

(The document referred to was marked Defendants' Exhibit A.)

Mr. Goldstein: May I have the privilege of reading it to the jury, your Honor? It isn't very long, but I think to have the continuity it should be read at this time.

This is a certified copy of the power of general agent issued by General Accident Fire and Life Assurance Corporation, Ltd., to Walter B. Wentz and George E. Erlin, doing business as Wentz &

(Testimony of Leon Karl Fereva.)

Erlin, which appointment was dated May 12, 1931:

“Know All Men By These Presents: That the General Accident Fire and Life Assurance Corporation, Ltd., a company or corporation formed under the laws of the Kingdom of Great Britain, and carrying on the business [31] of Casualty insurance in the State of California, has constituted and appointed, and by these presents does hereby constitute, appoint and designate Walter B. Wentz and George E. Erlin doing business as Wentz & Erlin having their place of business at Insurance Center Bldg., 206 Sansome St., San Francisco, California, its true and lawful attorney in fact to appoint solicitors and agents within the State of California in accordance with the provisions of Section 633 of the Political Code, and further authorizes and empowers him, in the name, place and stead of said company or corporation, as principal, to make and execute, and cause to be made and executed, with sufficient sureties, a good and sufficient bond or bonds, as provided in Section 623 of said Political Code, and thereby fully and firmly to bind said company or corporation on its part to perform and keep all the obligations and covenants thereof.

“In Witness Whereof, The said company has to these presents affixed its seal, and caused its name to be subscribed and attested by its Asst. United

(Testimony of Leon Karl Fereva.)

States Manager at Philadelphia, State of Pennsylvania, this twelfth day of May, A. D. 1931.

“[Corporate Seal]

“GENERAL ACCIDENT FIRE
AND LIFE ASSURANCE
CORPORATION, LTD.,

“By JAS. F. MITCHELL

“Asst. United States Manager.

“Attest

“A. BURSTON,

“Chief Accountant.

“The person named must be the General Agent appointed in [32] accordance with the provisions of Section 616 of the Political Code.”

And attached to the power of attorney is a verification:

“State of Pennsylvania

“County of Philadelphia”——

which is duly taken before one E. L. Wright, Notary Public, and the reading, I think, is immaterial.

The certificate of the Commissioner of Corporations reads as follows:

“San Francisco, December 1, 1941.

“I, A. Caminetti, Jr., Insurance Commissioner of the State of California, do hereby certify that I have compared the annexed copy of Power of General Agent issued by General Accident Fire and Life Assurance Corporation, Ltd., to Walter B. Wentz and George E. Erlin doing business as

(Testimony of Leon Karl Fereva.)

Wentz & Erlin, which appointment was dated May 12, 1931, with the original now on file in my office, and that the same is a full, true and correct transcript thereof, and of the whole of said original.

“In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.”

Q. Now, Mr. Fereva, do you know Mr. Walter B. Wentz personally? A. No, I do not.

Q. You never met him, did you? A. No.

Q. Do you know him now?

A. I wouldn't know him.

Q. You have never seen him at all?

A. No, sir.

Q. Who, in connection with Wentz & Erlin, did you deal with since 1929, up to July 1, 1941, when you ceased to be an insurance agent?

A. Mr. Robert Urquhart. [33]

Q. Mr. Robert F. Urquhart. Did Wentz & Erlin, during the period of time I have mentioned, have a branch office in the City of Sacramento?

A. Yes, sir.

Q. Where, in Sacramento, was that office located? A. In the Ochsner Building, I think.

Q. In the Ochsner Building? Were they at one time in the Capital National Bank Building?

A. Yes, sir.

Q. Do you know Mr. Robert Urquhart personally? A. Yes, sir.

Q. Do you know him intimately?

(Testimony of Leon Karl Fereva.)

A. Yes, sir.

Q. Is he a friend of yours?

A. A very particular friend.

Q. And during the ten-year period, let us say, from 1930 to 1940, did you consult him in connection with insurance business you were transacting?

A. Many, many times.

Q. What was his designation? What was he known by?

A. He was district representative.

Q. I show you at random one policy issued—

The Court: Q. District representative of what?

Mr. Goldstein: Q. District representative of Wentz & Erlin?

A. Yes.

Mr. Goldstein: I will connect that up, your Honor, later.

Q. Did you place your insurance policies, and your various insurance coverages through Mr. Urquhart?

A. Yes, sir.

Q. That is, through the Sacramento office?

A. Yes, sir.

Q. How often, can you tell the jury, did he visit you per month, or during the year?

A. Why, two or three times a month.

Q. At your place of business? A. Yes.

Q. In the case of any accident arising under any policy which was issued to you, or through you, who would you report it to?

Mr. Scott: Just a moment. Objected to in so

(Testimony of Leon Karl Fereva.)

far as it deals with any policies other than those of the General Accident. [34]

Mr. Goldstein: If the Court please, I come back, your Honor, that under the pleadings here we have the right to show the system, and method, and practice, and custom, and mode, with reference to reporting accidents or losses, and show just what was done. He is an agent of the company, and I have the right to show what the company did, not only as affecting this one policy—of course, that would not establish a practice, or custom, or mode—but any other loss or accident. That is the law in California, that wherever the question of waiver and estoppel—

The Court: You are speaking of the insurance company involved in this case?

Mr. Goldstein: Yes, sir; the General Accident.

Mr. Scott: That is just the point; you didn't ask him that. That is why I am objecting.

Mr. Goldstein: I stand corrected, Mr. Scott.

The Court: Proceed.

Mr. Goldstein: I will confine myself to the plaintiff corporation here, the General Accident Fire and Life Assurance Corporation, Ltd.

Q. Did you report accidents, or cases of loss, for a period of, say, the last ten years, from the first day of July, 1930, to the first day of July, 1940, to Mr. Urquhart? A. Many of them.

Q. How did you report them?

A. Either by phone or by personal contact.

Q. Orally? A. Orally.

(Testimony of Leon Karl Fereva.)

Q. And on those occasions what happened when you made that report to Mr. Urquhart?

A. Why, he took it up with the necessary channels and they were taken care of.

Q. Did you, during that period—by the way, did you receive commissions on all policies which were issued through your agency? [35]

A. Yes, sir.

Q. Now, let me ask you, Mr. Fereva, did you have the right to insure a man who came to your establishment, on the spot? A. I did.

Mr. Scott: Just a moment. I object to it unless it be limited to the General Accident.

Mr. Goldstein: Your Honor, may I make this suggestion: All my questions, counsel, now shall be limited solely to his company.

Mr. Scott: I am trying to see they are.

Mr. Goldstein: Very well. I will be happy to do it.

The Court: So there will be no difficulty, mention the name of the company.

Mr. Goldstein: I beg your pardon?

The Court: So there will be no difficulty, mention the name of the company.

Mr. Goldstein: Very well. I just was going to simplify it by saying all my questions would be directed to the plaintiff company.

Q. In connection with this General Accident Fire and Life Assurance Corporation, did you have the right to insure a man on the spot for fire and

(Testimony of Leon Karl Fereva.)

theft, public indemnity, public liability, fire insurance, or collision insurance? A. Yes, sir.

Q. Now, will you please state whether or not, if you sold an automobile, let us say, in your establishment at Lincoln, and you then delivered the car, whether or not you notified the individual he was then and there insured?

Mr. Scott: Just a moment. Objected to on the ground it is incompetent, irrelevant and immaterial, unless it be shown he has some authority from the General so to do.

Mr. Goldstein: Your Honor, that is the very thing the Supreme [36] Court held is the test of whether he is a general agent. We can show that by what he did and what the custom was, and, of course, under the license he had a right to do it—

Mr. Scott: Just a moment. I object to that statement. Under that license he had a right to solicit. Wentz & Erlin are the general agents; the other man is a soliciting agent.

Mr. Goldstein: Your Honor, I take issue with that statement, and I want to call your Honor's attention to one thing that Mr. Scott overlooked in this license. The license reads:

“ . . . insurance agent to solicit, negotiate, or effect contracts of insurance . . . ”

Now, your Honor, I want to show he did effect contracts of insurance, and that was the mode and practice, that when he sold a man a car, he insured the man right there, and he notified Mr. Urquhart

(Testimony of Leon Karl Fereva.)

that he had done so, who then notified Wentz & Erlin, and they then sent the policies in, but the man was insured from the very moment he drove out of the garage in the car.

The Court: Proceed.

Mr. Goldstein: Q. Do you understand my question?

A. Will you repeat it?

Q. Did you, during those ten years you were the agent for this plaintiff company, have the right, and did you insure a man on the spot when he came in to your establishment and wanted insurance?

A. Yes, sir.

Mr. Scott: Same objection.

The Court: The objection is overruled.

Mr. Goldstein: Q. How is that?

A. Yes, sir; many, many times.

Q. All right. What did you say to any purchaser of insurance in this company, this particular company? [37]

A. There was a form made out and he was notified he was insured from that minute on.

Q. Now, when the policy came into your possession—. How long would it take for the policy to come to you from Wentz & Erlin, about?

A. Sometimes a week, probably; two weeks, three weeks, or longer.

Q. Now, Mr. Fereva, when the policy came to you, was the policy dated as of the date that you sold the car or insured the man?

A. Yes, sir.

Q. How many times did that happen in the ten-

(Testimony of Leon Karl Fereva.)

year period that you were agent of this plaintiff company? A. Probably hundreds of times.

Q. So that when Mr. Scott asked you whether you signed any policies, you understood by that, did you, that you did not actually sign the policy yourself? A. Yes, sir.

Q. But you did make contracts to insure people for the company, and you did it all those years, is that correct? A. Yes, sir.

Q. And did you do the same thing with your own policies of insurance? A. Yes, sir.

Q. Now, you had numerous policies, did you not? You, personally, had numerous policies?

A. Mr. Urquhart at intervals came to my place of business and talked them over.

Q. Now, your individual policies. I am speaking of policies issued to L. K. Fereva. Did the same thing happen? When you had an automobile, did you insure it yourself and then notify Wentz & Erlin to issue the policy?

A. The forms were mailed right in.

Q. That is what I say.

Mr. Scott: Pardon me. What was that answer?

Mr. Goldstein: "The forms were mailed right in." Will you [38] stipulate, counsel, that this is a certified copy of the designation by Wentz & Erlin of the appointment of Mr. Fereva as an agent for the plaintiff corporation (exhibiting document to counsel)?

Mr. Scott: I will stipulate it is a certified copy of the document which it purports to certify.

(Testimony of Leon Karl Fereva.)

Mr. Goldstein: Very well; thank you.

Mr. Scott: The effect of that document——

Mr. Goldstein: If the Court please, I desire to offer in evidence a notice of the plaintiff corporation of the appointment of Mr. Fereva as an agent of the company—I will use that term at the present time—and ask to have it marked Dickinsons' Exhibit B.

The Court: Admitted.

(The notice of appointment and certificate were marked Defendants' Exhibit B.)

Mr. Goldstein: May I read this to the jury, your Honor? (Reading.) “(Must be filed in duplicate.)

“Notice of Company Appointment

“Name of Company General Accident Fire & Life Assurance Corporation, Ltd.

“To the Insurance Commissioner of the State of California:

“Notice is hereby given that the undersigned insurance company, authorized to transact business in this State, has appointed L. K. Fereva of Lincoln, California, to act as its agent within the State of California, unless license shall be denied, revoked or suspended. This appointment shall remain effective for the license period July 1, 1937, to June 30, 1938, inclusive, but if, before this appointment becomes effective or while it is in effect, any statute is enacted which requires or permits [39] the filing with the commissioner of such an

(Testimony of Leon Karl Fereva.)

appointment to remain effective until filing of a document terminating such appointment, then this appointment shall continue in effect until such document terminating it is filed.

“Dated at San Francisco this 1st day of July 1937.

“GENERAL ACCIDENT FIRE
& LIFE ASSURANCE COR-
PORATION, LTD.,

“By WENTZ & ERLIN,

“By W. B. WENTZ.”

And the certificate dated December 1, 1941:

“I, A. Caminetti, Jr., Insurance Commissioner of the State of California, do hereby certify that I have compared the annexed copy of Notice of Company Appointment issued by General Accident Fire & Life Assurance Corporation, Ltd., to L. K. Fereva, of Lincoln, California, filed July 1, 1937, and which remained in force until July 1, 1941 when Mr. Fereva failed to renew his license with the original now on file in my office, and that the same is a full, true and correct transcript thereof, and of the whole of said original.

“In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

“A. CAMINETTI, JR.,

“Insurance Commissioner.

“By MAE BARR LONG,

“Deputy.”

(Testimony of Leon Karl Fereva.)

Q. Now, Mr. Fereva, prior to 1937 did you have the same kind of an appointment and the same kind of a license as was offered in [40] evidence here?

A. Yes, sir.

Q. Did you also have the same sort of an appointment from the Potomac Insurance Company, through Wentz & Erlin, the same agents?

A. Yes, sir.

Mr. Scott: Just a moment. I move the answer go out, and I would like to object on the ground——

The Court: It may go out.

Mr. Scott: ——it has nothing whatever to do with the issues in this case, not concerning the General.

The Court: What is the purpose of it?

Mr. Goldstein: The purpose is to again show a course of conduct not only so far as this company is concerned, but also another company, and it is circumstantial evidence, if I may use that term, bearing upon the practice, mode, and custom, not only with respect to the agent, but the general agents of the company. This is the same agent and the same general agents, and if we had two or three other companies we would be permitted to show it, because it bears on the whole question of what the agent did and what Mr. Fereva did. Your Honor will recall in the Conney case the Court held that you have to apply all the facts and circumstances indicating a course of conduct which can

(Testimony of Leon Karl Fereva.)

be deemed to be a waiver of a condition of the policy precedent to recovery.

(Argument.)

The Court: The Court will admit it subject to the statement that you will connect it up.

Mr. Goldstein: Very well, your Honor.

Mr. Scott: Does that place upon me the burden of moving to strike it out?

The Court: Yes.

Mr. Scott: May I suggest we are going to have a badly [41] encumbered record if we——

Mr. Goldstein: Your Honor, I am willing to do this: I will withdraw my offer and predicate my entire case on the plaintiff corporation. I will not encumber the record, and I will take no chances on any legal questions involved pertaining to the order of proof.

Q. Mr. Fereva, I will show you two policies, one dated August 1, 1939, another one dated December 16, 1938,—let me have the Mercantile, please—I will take out these policies, all except the plaintiff company. Just take these General Accident policies (exhibiting documents to witness). Take a look at these. Were those policies that I have just handed you, Mr. Fereva, policies issued to you by the plaintiff corporation at other times in addition to the policy now in question?

A. Yes, sir.

Q. Now, when these policies came to you, were they in the form as they are now, with the paster on the bottom as it appears here (indicating)?

(Testimony of Leon Karl Fereva.)

A. Yes, sir.

Q. Now, I asked you a moment ago as to who Mr. Urquhart was, and you said he was the district representative of Wentz & Erlin.

A. Yes, sir.

Q. And he is the man with whom you dealt regarding insurance?

A. Entirely.

Q. Entirely.

Mr. Goldstein: If the Court please, I desire to offer in evidence these five policies, and they are not full in point of time; I have only from December 16, 1938, down to May 10, 1941—I can produce a number of them, but I am just taking a few by way of exemplar, to indicate that these policies—one, for instance, is for public liability, and one is for workmen's compensation, a liability policy, another one is for collision, and the various [42] forms and types of policies issued by the plaintiff corporation, and I just picked those out as samples.

Mr. Scott: Well, I object to them as irrelevant, incompetent and immaterial, as in no way modifying the provisions of the automobile policy—none of them are—there is a garage liability policy, but none are automobile policies such as the one in question, and furthermore, no foundation has been laid for the endorsement by R. F. Urquhart to which counsel evidently is referring on the back thereof; no showing that Mr. Urquhart has any authority whatsoever to waive the provisions of the policy.

(Testimony of Leon Karl Fereva.)

Mr. Goldstein: If your Honor pleases, if that is the situation, I would like to have the privilege of calling to the stand the general agent of the company, and let Mr. Fereva step down until I lay the foundation. I was going to connect it anyway, but when Mr. Scott is that technical——

Step down, Mr. Fereva.

Mr. Scott: Just a moment. Even His Honor agrees that I am right.

Mr. Goldstein: Step down, Mr. Fereva.

Mr. Scott: You know, counsel, once in awhile I am right.

Mr. Goldstein: You have the impression that you are always right, Mr. Scott. Perhaps you are; I don't know.

(The Witness Fereva was temporarily withdrawn.) [43]

WALTER B. WENTZ.

Called for the Defendants under the provisions of Section 2055 C. C. P.; Sworn.

Direct Examination

By Mr. Goldstein:

Q. Mr. Wentz, you are a resident of the City and County of San Francisco? A. Yes, sir.

Q. And have been for a great number of years?

A. Yes.

Mr. Scott: Pardon me. May I ask now, so I may not be confronted with the dilemma as did my friend here a moment ago, in what stage of

(Testimony of Walter B. Wentz.)

the case and in what character is counsel calling Mr. Wentz?

Mr. Goldstein: I am calling Mr. Wentz under 2055, he being the managing agent and the attorney-in-fact for the plaintiff corporation.

Mr. Scott: That may be true, but in what stage of the case——

Mr. Goldstein: I am calling him, if the Court pleases, for the purpose of laying the foundation to introduce certain evidence to meet the technical objection, and it is either in the plaintiff's case or in the Dickinson case, it is immaterial which. I have a right to call Mr. Wentz under 2055, he being the managing agent and attorney-in-fact of the plaintiff.

The Court: Proceed.

The Clerk: For my information, is he being called as your witness?

Mr. Goldstein: Under 2055.

Q. Mr. Wentz, I offered in evidence here Dickinson Defendants' Exhibit A, the certified copy of your appointment as attorney-in-fact of the plaintiff corporation. You are familiar with that document (exhibiting document to witness)?

A. Yes.

Q. And you and Mr. Erlin have been acting as attorneys-in-fact for [44] the General Accident Fire and Life Assurance Company since the date of this appointment, the 12th day of May, 1941?

A. Is that appointment personal, or is it to the firm?

(Testimony of Walter B. Wentz.)

Q. It is to the firm. This designates Walter B. Wentz and George E. Erlin, doing business as Wentz & Erlin. A. Yes, sir.

Q. Where do you have your office in San Francisco? A. In the Insurance Center Building.

Q. It is 206 Sansome? A. 206 Sansome.

Q. And you have a branch office here in Sacramento, have you not? A. Yes, sir.

Q. And where did you have your branch office, let us say from 1930 until 1935?

A. Well, we are a little out of line on that. It is my impression that Wentz & Erlin did not start until 1931.

Q. 1931?

A. Yes; and I doubt whether we immediately had a branch office in Sacramento.

Q. Well, to the best of your knowledge, Mr. Wentz, when, would you tell the jury, did you establish a branch office in Sacramento?

A. My idea is around 1932 or 1933.

Q. Very well. Take the latter date, 1933.

A. Yes.

Q. That would make it in line with your ideas, would it not? A. Yes.

Q. Where was your office located?

A. Personally, I would not know.

Q. Was it in the Ochsner Building, or the Capital National Bank Building?

A. It is in the Ochsner Building now.

Q. Now, but—is that 719 K Street?

(Testimony of Walter B. Wentz.)

A. Frankly, I don't know. I was in the office for the first time in my life the other day.

Q. All right, now, we are getting some place. Do you know Mr. R. F. Urquhart?

A. Yes, sir.

Q. Who is Mr. R. F. Urquhart?

A. Mr. R. F. Urquhart is a [45] salaried employee of my firm.

Q. I know that, but give us his name, his designation, his title.

A. Well, his title is district representative.

Q. District representative. I will show you here, Mr. Wentz, a policy dated July 16, 1938, a garage liability policy, and you will notice a paster on there, "In case of loss, removal, or any change, notify R. F. Urquhart, District Representative, 718 K Street, Sacramento. Phone Capital 7910." You have known of the existence of those pasters?

A. Frankly, I did not.

Q. You did not. Well, he had authority to be notified of losses in case of accidents involving the insured on this policy, did he not?

A. He was charged with no such duties.

Q. Well, what were his duties?

A. His duties I can best describe only to someone who understands the insurance business. He was a resident special agent. His duties have been principally to solicit business, solicit connections through sub-agents. He has not been charged, incidentally——

(Testimony of Walter B. Wentz.)

Q. How is that?

A. He has never been charged with any claim service, and I might explain to you that as far as the General Accident is concerned, I think I should explain to you my firm is not charged with any claim service by the General Accident.

Q. Now, Mr. Wentz, just a moment. I don't want any speeches. If you don't mind, just answer my questions. I think we will get along much better.

Let me have that policy.

Do you mean to tell this jury, Mr. Wentz, that since 1933 to the present time, that you did not know that Mr. Urquhart was receiving notices of accidents and notices of claims of any kind against this plaintiff corporation?

A. I can't say—I believe I can honestly say that it has never been called to my [46] attention that he did report any such accidents, nor did he have occasion to receive them.

Q. Who would know about that, if you don't?

A. I would believe that none of my firm would know about that. It would be under the jurisdiction of the claims department of the General Accident.

Q. Well, was he employed by your firm?

A. By my firm, yes.

Q. Did you pay his salary? A. Yes.

Q. But you don't know what he was doing?

A. As far as claims were concerned, we were paying him no salary for handling claims.

(Testimony of Walter B. Wentz.)

Q. I understand that, Mr. Wentz, but do you say now that you don't know of any instances where some of your agents, or some of your customers reported losses to Mr. Urquhart, or gave notices of accidents, is that what you mean?

A. So far as the General Accident is concerned, I wouldn't know.

Q. You wouldn't know. Well, what salary was he receiving, Mr. Wentz?

A. I honestly don't know that.

Q. You don't know about what the duties of Mr. Urquhart were, or what his salary was is that correct?

A. That is fairly correct.

Q. Who else did you have employed in the Sacramento office besides Mr. Urquhart?

A. I don't think we had anyone else.

Q. Isn't it a fact he had charge of your office for years in Sacramento?

A. It was a one-man office.

Q. That is what I wanted to find out. Did you have correspondence with him?

A. Personally I would have very little.

Q. I am not talking about personal correspondence, Mr. Wentz. You know what I mean. I am speaking of the firm of Wentz & Erlin, insurance agents for the plaintiff corporation. Did you have [47] correspondence with him during those years?

A. Did the firm have correspondence?

Q. Yes. A. Surely.

Q. Isn't it true that he reported accidents to your firm in San Francisco, and he went out and

(Testimony of Walter B. Wentz.)

even investigated accidents and turned cases over to another agent of the company here in Sacramento?

A. For the General Accident?

Q. For the General Accident.

A. I don't think so.

Q. He did it for some other companies, you mean?

A. Yes, sir.

Q. You mean, Mr. Wentz, Mr. Urquhart had the right to report accidents or receive reports of accidents for other companies, but not the plaintiff corporation, is that what you mean?

A. Well, that is practically the case, yes.

Q. Do you know Mr. Walter Henretty?

A. Yes, sir.

Q. What is his business in connection with this insurance company?

A. Frankly, I can't exactly tell you, because——

Q. How long have you known him?

A. I have known him indirectly for maybe 10 or 15 years.

Q. But you don't know what his position was with this company, do you?

A. I don't know, really, what his position is. He doesn't—he operates entirely through and for the claims department of the General Accident.

Q. Well, then, you do know who he is?

A. I know who he is, yes, but I don't know exactly what he does, because that is not under my jurisdiction at all.

Q. I understand, Mr. Wentz, you being the general agents—just strike that. By the way, what

(Testimony of Walter B. Wentz.)

territory do you have under your power of attorney? A. Northern California.

Q. Northern California. Where does it extend from? Just give us [48] some idea.

A. From a line about south of Fresno County north to the Oregon line.

Q. And you are the only ones who have the power of attorney to act for this company?

A. The only ones who have any contract with them.

Q. Now then, I asked you a moment ago as to whether or not Mr. Urquhart was your business representative, and you said that he was.

A. Yes.

Q. Now, Mr. Wentz, do you know Mr. Fereva at all, one of the defendants here? A. No, sir.

Q. Did you ever talk to him? A. No, sir.

Q. Do you know whether Mr. Erlin, your partner, knows him? A. I don't know.

Q. Did you in any way have any contact at all in connection with any insurance policies that were written by you for him or through him for anybody else?

A. Not until the—I never heard of the man until after this case came up.

Q. I see. However, this is true, is it not: that on the 1st day of July, 1937, you signed a notice of company appointment of Mr. L. K. Fereva as an agent for your company? A. I believe so.

Q. And isn't it true that as an agent for the company he had the right to insure people when he

(Testimony of Walter B. Wentz.)

sold a car, or when he had them in his office, and then notify you, and you sent a policy in there and dated it as of that date?

A. I don't understand so.

Q. Didn't he do it?

A. Not with my knowledge.

Q. Didn't your company do it? A. No, sir.

Q. Doesn't every insurance company do it?

A. No, sir. I have no right myself, as an agent, to execute a verbal policy of insurance.

Q. Well, it is done, isn't it?

A. No, sir. [49]

Q. Isn't it a fact your company did sign these policies and send them to Mr. Fereva time and time again, and dated them the date the application was dated? A. Yes, sir.

Q. That is correct, is it? A. Yes.

Q. That was done, was it? A. Yes.

Q. So if an application came in, let us say, dated noon, December 22, in your office, and your policy went out a week or two weeks hence, it would be dated noon, December 22, and not a week or two weeks later, is not that a fact?

A. Yes, but it would not be dated at all unless we accepted the coverage.

Q. But if you accept the coverage it is then dated the date of the application?

A. If we accept it.

Q. Now, in Mr. Fereva's case, he testified he had hundreds of policies issued through him for people who came in to his place of business; that he had

(Testimony of Walter B. Wentz.)

insured them and notified the company, and the policy came in within a week or two weeks. That is correct, is it not?

A. I can't say I heard all he said.

Q. But if that was done, that would be in accordance with the practice of your insurance company?

A. Well, if he believed he had a right to insure anybody, they were insured as soon as he told them they were, he is entirely wrong from my standpoint. I never agreed with him that he had any such right.

Q. You never talked to him, did you?

A. We have never given any agent any such right.

Q. You have never given any agent any such right, and you have no such right yourself, but you do it all the time, don't you?

A. No, we dont.

Q. Oh, Mr. Wentz——

A. We are furnished with cover notes, cover notes with the signature of the United States manager on them, and we countersign [50] those and send them out.

Q. Mr. Wentz, isn't it true that every agent that you appoint for this company, the plaintiff corporation, practically insures people on the spot when they come in and say, "I want to insure my automobile, my house," or whatever it is, the man says, "You are insured, and you will get your policy within a week or so"? Isn't that true?

(Testimony of Walter B. Wentz.)

A. I don't know of any agent we have who has a right to do that.

Q. Mr. Wentz, isn't that the custom, and wasn't that followed by your company and by Mr. Fereva?

A. No, it wasn't followed by Mr. Fereva, not with my consent.

Q. Just a moment, Mr. Wentz. Isn't that the custom? Isn't that done all the time?

Mr. Scott: Just a moment.

Your Honor,——

Mr. Goldstein: Your Honor, I am entitled to get a direct answer, as to whether or not that is the practice and has been the practice of this company all during the time for, let us say, the last ten years.

A. The answer is no.

Q. No. Very well. Then you don't know what Mr. Urquhart did in regard to that at all?

A. I know what he didn't have any right to do.

Q. I am not asking you that, Mr. Wentz. I am asking you if you know what he did.

A. I don't know what the other fellow did under any circumstances.

Q. Well, he was employed by you as district representative. What was his salary, Mr. Wentz?

A. I told you that I don't know.

Q. You don't know. How long has he been working for your firm?

A. For the present firm, I believe it has been almost since we [51] have been in existence, and that has been ten years; since 1931.

(Testimony of Walter B. Wentz.)

Q. And what do you mean, that he was a soliciting agent?

A. Well, I mean his duties were principally in connection with acquiring business.

Q. Acquiring business from whom? Individuals?

A. No; from agents.

Q. Agents, yes.

A. And brokers.

Q. And brokers. All right. So he dealt directly with agents and brokers, insurance brokers and insurance agents in California? That is correct, is it? And he dealt with your agents, and appointed agents, did he not?

A. What do you mean, our agents?

Q. Did he not contact and visit your agents of the General Accident?

A. Yes.

Q. Health and Life Assurance Corporation?

A. Yes, but principally for our other companies.

Q. For your other companies, yes. But I can't go into that. I have been confined to this company, and I am asking you, Mr. Wentz, whether for this company, if he did not visit your agents with reference to your company's business, and discuss matters with them with reference to insurance?

A. I think he did.

Q. So he was representing you in that capacity at least, wasn't he?

A. In the capacity of a soliciting agent, yes.

Q. Why do you always put the word in, "soliciting agent?"

A. Well, because that is my idea of his duties.

Q. Didn't Mr. Urquhart see your agents in con-

(Testimony of Walter B. Wentz.)

nection with claims they may have had, and discuss them with them?

A. Not for General Accident claims, he wasn't supposed to.

Q. Other insurance companies, yes, but not the General Accident?

A. Not the General Accident. [52]

Q. Why that distinction, Mr. Wentz?

A. Because the General Accident has provided us with a claims department which is entirely outside of our jurisdiction. We house it, but there is an organization consisting of about five men and eight or nine women operating as a claims department for the General Accident, and we have no authority over that organization, do not pay their salaries, do not pay their expenses, and, as I say, we have no authority over them.

Mr. Goldstein: Just one question, your Honor.

Q. You don't know, then, of any of the notices that were sent in by Mr. Urquhart to the General Accident, this other office we are speaking about, reporting accidents, do you?

A. I do not. If he sent them in for the General Accident he would have sent them to the claims department.

Q. To Mr. Murray, is that right? A. Yes.

Q. And he may have done that?

A. He may have.

Q. And you do not know of it?

A. I do not know of it.

(Testimony of Walter B. Wentz.)

Q. If he did that would you say he had no right to do it?

A. I would say he was not under duty to do it.

Q. But he did it for a great many years, did he not?

A. I don't think there is very many he did it.

Mr. Goldstein: That is all, Mr. Wentz. [53]

Mr. Scott: Mr. Henretty.

WALTER B. HENRETTY,

called for the Plaintiff; sworn.

Direct Examination

Mr. Scott: Q. Your name is Walter B. Henretty?

A. That is right.

Q. And where do you reside?

A. Sacramento.

Q. What is your occupation?

A. I am an attorney.

Q. And how long have you been an attorney?

A. Well, in California, 19 years.

Mr. Goldstein: I didn't get the answer.

The Witness: In California, 19 years.

Mr. Scott: Q. In connection with your practice of the law, do you, from time to time, handle business for the claims department of the plaintiff company? A. I do.

Q. And in this area? A. Yes.

Q. And that is done under the direction of whom?

(Testimony of Walter B. Henretty.)

A. Mr. William F. Murray; he is the manager of the claims department.

Q. Mr. William F. is and has been very ill for a long time, has he not? A. That is right.

Q. Are you acquainted with Mr. L. K. Fereva, one of the defendants in this action? A. I am.

Q. How long have you known Mr. Fereva?

A. Well, I wouldn't be [55] able to say exactly, but I have known him—well, I knew him prior to the time this matter arose, but exactly how long I couldn't tell you.

Q. Calling your attention to Plaintiff's Exhibit No. 5 in evidence, I ask you whether you have ever seen that document before?

A. Yes; I prepared it.

Q. And when and where did you prepare that document?

A. On April 26, 1940, in my office in the Bank of America Building in Sacramento.

Q. And at that time Mr. Fereva, the defendant—one of the defendants, was present?

A. He was.

Q. At that time and place did you have a conversation with Mr. Fereva on the subject of reporting the happening of an accident? A. I did.

Q. And calling your attention to the fact that the accident itself appears to have been on February 25, 1940, and this report is made out April 26, 1940, 60 days thereafter, can you state whether or not anything was said by Mr. Fereva on the topic, as to why the report was so late? A. It was.

(Testimony of Walter B. Henretty.)

Q. Did you, at that time and place, and in the presence of Mr. Fereva, make a memorandum of what he stated on that subject to you?

A. I did.

Q. Have you that memo? A. I have

Q. Will you please produce it?

A. (Witness produces document.)

Q. Will you state what Mr. Fereva, at that time and place, said to you upon the subject?

Mr. Goldstein: Just a minute. If the Court please, I am going to object to this unless the witness cannot state the conversation without referring to the memorandum. The best evidence, [56] of course, is what was said. The memorandum is only secondary.

The Court: Well, he may refresh his memory by it.

Mr. Goldstein: To refresh his recollection.

A. Well, I asked him why he had not reported the matter, and pointed out it was more than two months, and asked him why he hadn't done it. "Well," he said, "the reason I did not report it was that I didn't feel it was of enough importance, and the highway patrol exonerated me completely."

Mr. Scott: Q. What, if anything further, did Mr. Fereva say to you at that time upon that subject?

A. Well, there was no further elaboration of it. He might have repeated the same—I pointed out to him that it was going to be a serious handicap to have delayed it so long, and he might have repeated

(Testimony of Walter B. Henretty.)

it—I didn't write that repetition down. He might have repeated that the officers had exonerated him is why he hadn't done anything about it.

Mr. Scott: Take the witness.

Cross Examination

Mr. Goldstein: Q. Mr. Henretty, may I see that memo?

A. (Witness produces document.)

Q. You write shorthand, don't you?

A. I do.

Q. And whenever you write shorthand the man whom you are talking to doesn't know what you are writing, isn't that true?

A. Well, I assume he doesn't.

Q. Well, now, let's see. You say you have been in California for 19 years, and you are an attorney?

A. No, I didn't say that.

Q. Well, you have been an attorney for 19 years in California? A. Yes.

Q. You are not practicing law here, are you?

A. Yes, I am.

Q. In what way? [57]

Mr. Scott: I suggest, if your Honor pleases, that that is incompetent, irrelevant and immaterial.

Mr. Goldstein: I submit the question, your Honor.

The Court: Proceed.

Mr. Goldstein: Q. In what way are you practicing law?

A. Well, I am practicing law.

Q. As an insurance adjuster, isn't that right?

(Testimony of Walter B. Henretty.)

A. Well, I represent several insurance companies.

Q. You practice law as an insurance adjuster, is that not right? Investigating claims, representing various insurance companies regarding losses; and that is what you call practicing law, isn't that true?

A. Well, I do investigate claims. I investigated this one, too. But I have other business.

Q. Other business. Do you try cases in the Superior Court? A. Yes.

Q. What kind of cases?

Mr. Scott: Objected to as incompetent, irrelevant and immaterial.

Mr. Goldstein: I submit the question.

The Court: I think that is immaterial.

Mr. Goldstein: Very well.

Q. But isn't it a fact, Mr. Henretty, that your main business is acting as an insurance adjuster and investigator for various companies in connection with accidents, losses, indemnity losses, fire losses, theft losses, and the like?

A. Well, you covered too much ground there, Mr. Goldstein.

Q. Well, I will withdraw some of it. Let me eliminate some of it.

A. It is a fact that I have substantial business representing insurance companies.

Q. That is most of your business, isn't it?

A. Well, I don't [58] know whether you would want to take that division—whether it is most of my time, or most of my income—

(Testimony of Walter B. Henretty.)

Q. These are your original notes in this case, are they not? A. That is right.

Q. You have given the jury just a few statements. What about all the rest of your shorthand here?

A. I would be glad to read it to you.

Q. No one could understand it unless you read it, is that true? A. That is right?

Q. So whatever you have here are your own personal notes in shorthand?

A. That is right.

Q. And you read just the portion Mr. Scott asked you about?

A. Well, that is the only portion that relates to why he didn't report the accident.

Q. What does the rest of it relate to?

A. It relates to the details of the accident as he gave them to me.

Mr. Goldstein: If your Honor please, I will offer these original notes as corroboration of his testimony as to what appears there, and ask it be marked Defendants' Exhibit next in order.

The Court: Admitted.

Mr. Scott: If your Honor pleases, I respectfully submit they are incompetent, irrelevant and immaterial, and merely encumber the record. I am not going to object very strenuously, if counsel sees any benefit to be gained from them.

Mr. Goldstein: If the Court pleases, I understand it to be the law that where a witness identifies the original notes as being the means and

(Testimony of Walter B. Henretty.)

mode of his recollecting, that they are proper and competent evidence, and we are offering these to indicate that what the witness has testified to cannot be read by anyone else. [59]

The Witness: I can recollect it, your Honor; I can remember the occasion quite well. I can remember the phraseology quite well. I don't have to refer to those notes.

Mr. Goldstein: Q. You say you remember it quite well? A. Yes.

Q. And this conversation took place on the 26th day of April, 1940? A. That is right.

Q. You have had dozens and dozens of accidents since that time that you have investigated, isn't that true? A. Very probably.

Q. And you have been spoken to a great many times by people, witnesses, insureds, and other persons? A. Very probably.

Q. And do you mean to say now you can recall and recite a conversation that you had with those people on any particular day without referring to notes?

A. Maybe not, but this is different, Mr. Goldstein.

Q. What impresses this on your mind?

A. I had a number of other conversations with Mr. Fereva on it. This very thought ran through this whole case, his failure to report the same, and the prejudice that arose. It came up time after time.

(Testimony of Walter B. Henretty.)

Q. Mr. Henretty, you were talking about a written report.

A. What do you mean, written report?

Q. To Mr. Fereva in this conversation. Weren't you talking about a written report?

A. No; any kind of notice whatsoever.

Q. Did you make any such statement to him?

A. What do you mean, did I make any such statement to him?

Mr. Goldstein: Strike that.

Q. Did you ask him whether he reported it at all to anybody?

A. No. He said he had not, and his reason was this:—

Q. Isn't it a fact that what you were talking about was a written report? A. No. [60]

Q. Isn't it a fact what you considered was prejudicial was the failure to file a written report?

A. No. What I figured was prejudicial was his failure to tell anybody about it. For example—

Q. Now, just a minute—

Mr. Scott: Just a minute.

The Court: You interrupted him, Mr. Goldstein.

Mr. Goldstein: Q. Go ahead and finish your answer.

A. In working on the case we ran into different snags. People told us, "Well, I can't remember. Why didn't you come to see us at the time?" Well, I didn't know about it. I told Mr. Fereva several times, and he heard these people, some of them told me, "Well, if you asked me earlier I might have re-

(Testimony of Walter B. Henretty.)

membered." I said to him, "There you see what happens by reason of not telling us about it. You should have told us in March."

Q. Mr. Henretty, didn't you investigate this case yourself? A. Yes, I did.

Q. Took the statements of witnesses?

A. Some of them.

Q. Didn't you have every available witness in court on the trial of this case in Placer County?

A. Well, there were a couple that were there said they couldn't remember anything; they were too late. If I had asked them at the time——

Q. What you mean is you were trying to suggest something that they could not remember, isn't it?

A. No. I can give you an example of a witness that was there. It was an officer. He said, "I can't remember anything about it. Why didn't you come to us when it was fresh?"

Q. Don't you remember that officer testified in this case? A. He did not testify.

Q. Isn't it a fact an officer did testify?

A. It was a different officer. [61]

Q. The other officer didn't know anything about it?

A. He didn't remember. That was Captain La Porte.

Q. But the officer on the ground did testify, didn't he?

A. Well, La Porte was there probably as quickly as the other one.

(Testimony of Walter B. Henretty.)

Q. Mr. Henretty, how long have you been working for this company, the plaintiff corporation, the General Accident Fire and Life Assurance Company?

A. Well, I don't work for them at all. When I finish a job I send them a bill.

Q. They pay you by the case?

A. They pay my bill.

Q. How long have you been working for them by the case?

A. I would say the first was in 1923.

Q. In 1923. That is a matter of 18 years?

A. Yes.

Q. That is one of the oldest companies that you have been working for since you were in California as an attorney?

A. That is right.

Q. By the way, where did you come here from?

Mr. Scott: Objected to as incompetent, irrelevant and immaterial.

The Court: The objection is sustained.

Mr. Goldstein: Q. But at any rate the plaintiff corporation here is one of your clients?

A. Yes.

Q. In accident work, or indemnity work, fire and theft, matters of that kind?

A. Not fire and theft.

Q. Not fire and theft, but liability insurance. And you have handled hundreds of cases for them?

A. Yes, sir.

Q. And you still expect to handle them?

A. I hope so.

(Testimony of Walter B. Henretty.)

Q. You are still employed by them whenever they have work in this territory?

A. That is right.

Q. You have an interest in this case, haven't you?

A. No, sir. [62]

Q. Well, you have been in this courtroom every day.

A. I am under subpoena.

Mr. Scott: He is under subpoena.

Mr. Goldstein: I think I have the right to show the interest of the witness.

The Court: He said he had no interest in it.

Mr. Goldstein: I didn't hear it.

Mr. Scott: You should listen.

The Court: What was the answer?

(Record read.)

Mr. Goldstein: Q. However, you personally having been the adjuster and investigator of the case, would like to see the corporation win this case, wouldn't you?

Mr. Scott: Just a minute. I submit it is an improper question, incompetent, irrelevant and immaterial. In other words, are we going to leave the issue as to law or fact to vote of the witnesses?

The Court: The objection is overruled.

Mr. Goldstein: Will you read the question, Mr. Reporter?

(Question read.)

A. Well, I suppose if I personally was to choose sides on the thing, I realize that Mr. Fereva never told them anything about this accident until more than two months afterwards; I suppose you might

(Testimony of Walter B. Henretty.)

say if I am going to have any interest one way or another I might favor the company. Human nature, you know, is sort of that way. But it doesn't mean anything to me. I won't get anything out of it. If they win this case I will get paid; if they lose the case I will get paid. It will be the same amount either way.

Mr. Goldstein: Q. You know Mr. Murray very well? [63] A. Yes.

Q. You are intimate friends?

A. I know you well.

Q. I don't care anything about that. I think I know you, also. You know Mr. Murray very well; he is an intimate friend of yours, is that correct?

A. Yes.

Q. You have known him for about 18 years?

A. I have known him longer than that.

Q. But you didn't know Mr. Fereva, except you say you met him prior to the time he came into your office on the 26th of April, 1940, is that true?

A. Well, I knew him before that, but I wasn't asked how long I knew him before that. I couldn't say. I just met him prior to that.

Q. How much prior to that?

A. I couldn't say.

Q. Did you meet him in Lincoln? A. Yes.

Q. Isn't it a fact you have investigated accidents over there for this same company for Mr. Fereva? A. I don't recall.

Q. Isn't it a fact, Mr. Henretty, that within a year prior to the 26th of April, 1940, you were in

(Testimony of Walter B. Henretty.)

Lincoln and investigated an accident Mr. Fereva had to one of his own cars? A. It could be.

Q. As a matter of fact, weren't you there more than once on cases and accidents that Mr. Fereva had, or some of his clients had?

A. Probably. I don't recall exactly, but it could be, yes.

Q. But in any event you know Mr. Murray, whether or not you do Mr. Fereva? A. Yes.

Q. You also know Mr. Wentz, don't you?

A. Well, yes.

Q. How many years have you known him?

A. Well, I am not very well acquainted with Mr. Wentz even now, but I would say I had known him to identify him for 12 or 15 years, and somewhere along in there I got personally acquainted with him.

Q. You know Mr. Scott, do you not?

A. Yes. [64]

Q. How long have you known him?

The Court: Is this material?

Mr. Goldstein: Your Honor, it is just my last question on the subject, just to show——

Mr. Scott: Well, I object to his knowledge as to myself as quite immaterial.

Mr. Goldstein: It only goes to the matter of interest, your Honor, and I think it has been held to be competent. However, I will withdraw the question.

Q. Mr. Henretty, if you have that definite recollection of this conversation of April 26, 1940, how is it you cannot tell this jury when, and how many

(Testimony of Walter B. Henretty.)

times you went to Lincoln to investigate accidents that Mr. Fereva may have had prior to that time?

A. Well, that is a good deal like saying, "Where were you on the 20th of September, 1917?" You might remember where you were on the Fourth of July, 1936, or on Christmas Day, or New Year's Eve, but you pick an odd date at random, you cannot answer. This case—I worked on this case since April 26, 1940. It started out rather unusually, in that there was a long delay, and as time went on the thing began to kick back at us. Then, of course, there was a trial up in Auburn. This case has been in my mind. I have carried it along, done quite a bit of work on it. As you go along with the thing it impresses itself on you. I made notes of the things, and I reviewed the notes. I can tell you even the hour he came over there.

Q. In other words, you became especially interested in this case?

A. No, don't put it that way. I have other cases that I have as much interest in. But I do remember the circumstances.

Q. Mr. Henretty, you have been in Sacramento for at least 20 years prior to the 16th day of April, 1940, is that right? [65]

A. Yes, more than that.

Q. Did you ever, at any time, prior to the date of April 26th, see or prepare a written accident report for Mr. Fereva?

A. Well, I can't tell you. Maybe I did; maybe I didn't. If he says that I handled some for him,

(Testimony of Walter B. Henretty.)

then I very probably did, because that is the way it started.

Q. But did you receive any such accident report from Mr. Fereva that you know anything about, other than this?

A. Well, I cannot answer that yes or no.

Q. Well, if you went to Lincoln to investigate any accident, who sent you there?

A. Well, it could have occurred in more than one way.

Q. Well, give me any way.

A. Well, one way would be that I might get a letter from the company telling me, or asking me to do so. I might have been notified, or something, by Mr. Urquhart, or Mr. Fereva, and have gone there. I can't remember specifically whether I did or not. I probably—if you would cite the instance, if you have any such information, I might remember.

Q. Pardon me, Mr. Henretty. Where is your office located?

A. Bank of America Building.

Q. And you know Mr. R. F. Urquhart?

A. Yes.

Q. How long have you known him?

A. Oh, about nine or ten years.

Q. And you have known that during that period he has been district representative of Wentz & Erlin, or General Accident Fire and Life Assurance Corporation?

Mr. Scott: Pardon me. I object to that; that involves two or more things.

(Testimony of Walter B. Henretty.)

The Court: You may reframe the question.

Mr. Goldstein: Q. During that time you had business relations [66] with him, did you not?

A. In the early part I don't believe I did.

Q. When did you start to have relations? Let us get down to brass tacks. When was it?

A. I couldn't be specific, but probably along about 1932; maybe 1933; maybe 1934. But he wasn't with Wentz & Erlin then.

Q. He was with some other company?

A. I believe he was in business for himself.

Q. Well, when did you start to do any business with him in connection with the General Accident Fire and Life Assurance Corporation, Ltd., the plaintiff here?

A. Oh, I would say along about 1935.

Q. All right. Since 1935 he has referred to you for investigation accidents which were reported to him regarding the plaintiff corporation, isn't that true? A. Yes, occasionally.

Q. Then after he reported those accidents to you, you went out and did your work, investigated the case, took photographs, took statements, interviewed witnesses, isn't that right?

A. Well, yes; that all depended upon what it was.

Q. How did you meet Mr. Fereva on the 26th day of April, 1940?

A. Mr. Urquhart telephoned me and said L. K. Fereva had told him about an accident he had,

(Testimony of Walter B. Henretty.)

and he said, "I am going to bring him over," and the two of them came over to my office.

Q. That is what I want to find out. Mr. Urquhart brought Mr. Fereva to your office?

A. Yes. Urquhart said—I think it was Mrs. Fereva had telephoned earlier that her husband wanted to come down—it might have been Mr. Fereva done the telephoning—and he came down there with a summons and complaint that had been served on him the day before, and that was the suit you filed. So Urquhart called me up and brought him over there. [67]

Q. That was the occasion you met Mr. Fereva, and the occasion you prepared this written report of the accident?

A. Yes.

Q. Between the time that Mr. Urquhart phoned you and brought Mr. Fereva over there you did not talk with anyone representing the company? In other words, with Mr. Wentz or Mr. Scott. Isn't that true?

A. No, I didn't.

Q. In other words, you had authority—when Mr. Urquhart came in there with a case you had authority to go ahead and investigate it, isn't that right?

A. Yes.

Q. And that is what you had been doing for years? That is correct?

A. Yes.

Mr. Goldstein: That is all.

Redirect Examination

By Mr. Scott:

Q. Immediately upon the signing of this Exhibit 5 by Mr. Fereva did you forward the sum-

(Testimony of Walter B. Henretty.)

mons and complaint that this gentleman had brought in, and the report to Mr. Murray of the claims department of the General Accident?

A. You mean by report that printed form?

Q. Yes. A. Yes.

Mr. Scott: That is all.

Mr. Goldstein: I have no further questions.

The Court: That is all.

The Witness: Was this made an exhibit, the shorthand notes?

Mr. Goldstein: No, I didn't introduce them, your Honor.

Mr. Scott: Might I put Mr. Wentz upon the stand?

The Court: Yes.

Mr. Scott: Mr. Wentz.

WALTER B. WENTZ,

Recalled by the Plaintiff; Previously sworn. [68]

Mr. Scott: If your Honor pleases, I wish to ask, on redirect examination, two or three questions, to straighten out the record.

Direct Examination

By Mr. Scott:

Q. Mr. Wentz, yesterday you were asked about the firm of Wentz & Erlin and its representation of the General Accident Fire and Life Assurance Corporation, and testified that you and Mr. Erlin

(Testimony of Walter B. Wentz.)

were the general agents of the General Accident; that is correct, is it? A. Yes.

Q. Now, in your business as general agent what, if anything, does your agency have to do with the claims division of the General Accident Fire and Life Assurance Corporation?

A. We have nothing to do with the claim service, except that we house the claims department.

Q. The claims service, or claims department, is a branch of the company itself, is it?

A. Of the company itself.

Q. Now, as a firm of general agents, will you state whether or not Wentz & Erlin are and have for some years been the general agents of a number of other insurance companies as well?

A. Yes, sir.

Q. And during this time in, say, the years 1939 and 1940, what other insurance companies did Wentz & Erlin represent as general agents?

Mr. Goldstein: If the Court please, we object to that upon the ground it is incompetent, irrelevant and immaterial, and it is the same matter that I was going to go into yesterday, and Mr. Scott very promptly objected. He said no question about any other company had anything to do with this case; it was what was done in this case by this company. Now, if he wants to open up the question I have to go into it right down the line. We will either [69] confine the issue to the plaintiff corporation, or else we will open the door to all these things, and I will object to it unless I have the right to meet the issue

(Testimony of Walter B. Wentz.)

not only in this firm, but also as to the agency of the Defendant Fereva.

The Court: You may. The objection is overruled.

Mr. Scott: Will you read the question, Mr. Reporter?

(Question read.)

The Witness: You desire me to name the companies?

Mr. Scott: Q. Please, and tell what line of insurance that company carries.

A. The Mercantile of New York, for fire insurance.

The Court: How is this material, Mr. Scott?

Mr. Scott: Only indirectly, your Honor. In this respect: I wish to show that Mr. Urquhart, the district representative here, handled the work of Wentz & Erlin, general agents,—if it might so be true—for some six or seven various insurance companies, and show further that of those companies the only company that maintained in the office a complete claims department of its own as distinguished from the agency was the General Accident.

Mr. Goldstein: If the Court pleases, that absolutely would not be binding upon us at all, because ostensible agency can be created regardless of whether they have a division separate and apart from the main office. Your Honor is familiar with the ostensible agency proposition.

The Court: The Court will sustain the objection, Mr. Scott.

(Testimony of Walter B. Wentz.)

Mr. Scott: But even apart from that, might I, with due respect to your Honor, suggest what I have in my mind?

The Court: Yes.

Mr. Scott: The matter was touched upon by quite a number of [70] questions propounded by counsel for the defense, with the result that somewhat of a confusion remains in the record on the subject, and for that reason I want to show the setup. It is for that purpose.

The Court: Proceed.

Mr. Scott: Q. Will you proceed with the answer, Mr. Wentz?

A. Am I to proceed?

Q. Yes.

A. I mentioned the Mercantile of New York, fire insurance, which includes automobile fire coverages. The Potomac Insurance Company, for fire and automobile coverages. The Scotch Underwriters of Caledonia, for automobile coverages only. The United States Merchants and Shippers——

Mr. Goldstein: I didn't get that last name.

A. The United States Merchants and Shippers for automobile coverages only. I would like to explain that when I speak of automobile coverages I mean coverages to the automobile itself. None of those companies write what I call casualty insurance, which is insurance of the owner of the car. I mean they write fire, theft and collision, and no more.

(Testimony of Walter B. Wentz.)

Mr. Scott: Q. That is against loss or hazard to the property of the owner itself? A. Yes.

Q. As distinct from that of third persons?

A. Yes.

Q. Proceed.

A. In order to give you the list, I should further mention the Seaboard Surety Company, who write only bond, and no insurance.

Q. Now then, in connection with all of those other companies, did any of them contain separate claims departments in your agency?

A. None of them except the General Accident.

Q. At Sacramento you testified you had a one-man office consisting of Mr. Urquhart, is that correct? A. Yes. [71]

Q. And in connection with the business of Wentz & Erlin you said he was a salaried employee of your partnership, is that correct? A. Yes.

Q. Now, in connection with the business of these numerous companies which you have enumerated, will you state what the duties of Mr. Urquhart were?

Mr. Goldstein: Now, if the Court pleases, I am going to definitely object to this on the ground it is highly incompetent, irrelevant and immaterial, and has no bearing upon the present issue in the case.

The Court: The objection is sustained.

Mr. Scott: Might I subdivide the question, your Honor? I don't know what the practice is, whether in asking questions we stand up in this court or

(Testimony of Walter B. Wentz.)

not, your Honor. I have been sitting, but it is not out of disrespect of the Court.

The Court: I appreciate that.

Mr. Scott: Q. What, if any, duties did you, or your firm of Wentz & Erlin, delegate to Mr. Urquhart with reference to the General Accident Fire and Life Assurance Corporation?

A. My answer to that is that I don't remember that we delegated any specific duties to Mr. Urquhart as to the General Accident. His efforts for the General Accident as a special agent did not amount to ten percent of his production.

The Court: Q. What is meant by that last?

A. Beg your pardon?

Q. What is meant by the production?

A. Well, he is credited on our books on the amount of business that he influences into the office, and I will explain that his duties were largely in connection with the production of fire business and automobile fire business rather than casualty business. [72]

The Court: The Court only asked the question so the jury can understand you. "Production," standing alone, is meaningless.

Mr. Scott: Q. And was Mr. Urquhart given authority to write policies of insurance or make endorsements thereon for the General Accident Fire and Life Assurance Corporation? A. No, sir.

Q. Was he authorized by your partnership to make or enter into any oral contracts of insurance on behalf of the plaintiff company?

(Testimony of Walter B. Wentz.)

A. No, sir.

Mr. Scott: That is all. Take the witness.

Mr. Goldstein: This is cross examination of the witness, your Honor, called by Mr. Scott.

Mr. Scott: Just a moment. I examined Mr. Wentz on redirect examination as a witness called adversely by counsel.

Mr. Goldstein: Well, if the Court pleases,—

Mr. Scott: So we will understand our positions correctly. That is my position.

Mr. Goldstein: If your Honor pleases, that is why I made the statement this morning that I desired the examination yesterday to be considered as part of the defendants' case, so as to avoid any mixup.

Mr. Scott: I appreciate that, your Honor, but the point is this—that is an afterthought, after the gentleman has rested overnight, but I assume that what he was trying to do was done yesterday when he, himself, called this witness to lay a certain foundation with reference to Mr. Urquhart's authority before proceeding further in interrogating Mr. Fereva. That was done under a mild objection by me, and I think properly, considering the nature of this action, it being one for declaratory relief. We come here not as usual adverse parties, but come here laying [73] the entire problem before this Honorable Court, asking that our rights be determined. Now, having done that under his own volition I interviewed the witness to try to untangle the mess he left, asking him a few questions on

(Testimony of Walter B. Wentz.)

redirect examination. I don't believe the gentleman can now recross examine.

Mr. Goldstein: I will not cross examine. I will ask him a few questions in connection with the subject matter before the Court.

The Court: Proceed.

Cross Examination

Mr. Goldstein: Q. Mr. Wentz, who gave Mr. Fereva any instructions relative to any insurance company that he was the agent for under your appointment?

A. Who would give him those instructions?

Q. Yes, sir.

A. I would say in all probability it would be my partner, Mr. Erlin.

Q. Do you know, Mr. Wentz, whether your partner, Mr. Erlin, ever even saw Mr. Fereva in his life?

A. Oh, Mr. Fereva?

Q. Mr. Fereva; that is the man I am talking about.

A. Oh. I am afraid I didn't get your question.

Q. Pardon me, Mr. Wentz. I don't want to mislead you at all. I am going to put this very plainly. Now, I will put the question back to you again. Who gave Mr. Fereva any instructions regarding the writing of insurance and the manner and form in which it was to be done in connection with the power of appointment that you filed with the Insurance Commissioner of the State of California?

A. I would say that I believe that if there was

(Testimony of Walter B. Wentz.)

any communication on the subject with Mr. Fereva it would be by Mr. Urquhart.

Q. That is correct. Now then, so that anything, as far as your firm is concerned, Mr. Wentz—anything that Mr. Fereva did in [74] connection with obtaining insurance for your office, whether it was the General Accident, the Potomac, or the Mercantile, or the Seaboard, or the Scotch Underwriters, it would come into your office, but you didn't know how it got there, isn't that right, except that somebody took that business and directed it into your office; isn't that correct?

A. Not exactly. I feel that some business may have been sent in directly from Mr. Fereva to the San Francisco office.

Q. All right. Let me ask you, Mr. Wentz, will you please tell the jury what is your mode of operation in connection with a casualty policy, or indemnity policy, including fire, collision, property damage, or public liability; you say you write the policy in San Francisco?

A. In San Francisco.

Q. Let us get this plainly for the jury: Who is Mr. George S. Keil?

A. George S. Keil is one of the men in our office.

Q. In San Francisco?

A. In San Francisco.

Q. In these policies particularly, Mr. Wentz, isn't it true that the general agents always sign and write the policies? No other agent in California but the general agent signs them?

(Testimony of Walter B. Wentz.)

A. No, that is not true.

Q. Didn't you tell the jury yesterday that the reason you sign these policies is that you may turn down the risk? A. Yes, sir.

Q. Under those circumstances isn't it true it always comes from your office?

A. In the case of the General Accident, yes.

Q. All right. I will confine all of this to the General Accident Fire and Life Assurance Corporation. Isn't it true—I am just assuming this; I don't know whether it is or not—. Isn't it true in these policies where you insure a man for ten, twenty, or thirty thousand, or fifty, or a hundred thousand public liability, [75] that policy is written, signed and sealed in your office in San Francisco, and it is sent to the dealer or the insured?

A. Yes.

Q. Well, I will show you this policy, Mr. Wentz, the policy immediately previous to the one in question, the one from December 16, 1938, to December 17, 1939. I will show you the policy and will ask you to state to whom that policy was sent after it was signed by Mr. Keil in your office under date of December 6, 1938? To whom was it sent?

A. I would imagine to Mr. Urquhart.

Q. Mr. Urquhart, yes. That is what I want to find out. So that if, as appears here, the bottom notation, or the paster, "In case of loss, removal, or any change"—

Mr. Scott: Just a moment. I object to the introduction here on the ground on which your Honor

(Testimony of Walter B. Wentz.)

has already ruled yesterday—that no authority is shown in Mr. Urquhart to attach any paster that might vary or tend to vary the instrument itself.

Mr. Goldstein: It has not been offered yet.

The Court: It has not been offered yet.

Mr. Scott: Why read it to the jury?

Mr. Goldstein: I am just asking questions——

Mr. Scott: Simply an artifice——

Mr. Goldstein: No, I am going to offer it, Mr. Scott, before I get through.

Mr. Scott: You have offered it, and——

Mr. Goldstein: And I will get it in regardless of your efforts.

The Court: Gentlemen, it is quite hard for the Court to hear both of you at the same time.

Mr. Goldstein: I beg your pardon, your Honor.

Mr. Scott: Pardon me.

Mr. Goldstein: All I am doing now is asking certain [76] questions in connection with the manner and form in which the policy got into the hands of the insured, Fereva.

The Court: It is recess time. Recess for 15 minutes, ladies and gentlemen. Remember the admonition of the Court.

(Recess.)

The Court: Will counsel stipulate all the jurors are present and in their proper places?

Mr. Goldstein: So stipulated.

Q. Mr. Wentz, my last question was: This policy was sent to Mr. Urquhart for delivery to Mr. .

(Testimony of Walter B. Wentz.)

Fereva; you don't know how this paster came to be put on the policy then? A. I do not.

Q. Now, you mentioned something about the General Accident claims department being in your office. That is correct, is it? A. Yes, sir.

Q. In other words, Mr. W. F. Murray, the manager of the claims department, has his office right in your own place of business of Wentz & Erlin at 206 Sansome Street? A. Yes, sir.

Q. In the Insurance Center Building?

A. Yes, sir.

Q. And as you told the jury yesterday, you didn't pay the salary of Mr. Murray, but it was paid directly by the General Accident? A. Yes sir.

Q. But his department was right there along with your office where you write these policies and send them out for the various companies, and from where you operated? A. Yes, sir.

Q. Now, is this true, as you testified a moment ago: that you didn't give any specific instructions to Mr. Urquhart as to what his duties were in connection with the General Accident Fire and Life Assurance Corporation, Ltd.?

A. Personally, I have given no instructions at all.

Q. Do you know of anyone who did in your establishment? [77]

A. I don't know of anyone who did.

Q. Then may I assume that you don't know what he did do in the field in connection with your company?

(Testimony of Walter B. Wentz.)

A. No; I think that is going a little too far.

Q. Well,——

A. I knew some of the things that he did, because they would come to my attention for one reason or another.

Q. Well, what was Mr. Urquhart's territory?

A. Well, it was Sacramento and the surrounding territory.

Q. Sacramento north, wasn't it?

A. Sacramento north.

Q. Up to the Oregon line?

A. No, we never went that far.

Q. Well, you have agents in Butte County, have you not? A. I believe so; maybe one.

Q. And you have agents in Colusa County?

A. Yes.

Q. Tehama County? A. Yes.

Q. Placer County? A. Yes.

Q. Yuba County? A. Yes.

Q. Sacramento County? A. Yes.

Q. And in all these territories Mr. Urquhart interviewed agents and solicited business in this territory, on which you receive the commission?

A. Who received the commission?

Q. You receive the commission?

A. You must understand this: that the large majority of the business that he got for the General Accident in that territory came from an entirely different source of production. Mr. Urquhart would have nothing to do with that part of the business at all.

(Testimony of Walter B. Wentz.)

Q. Regardless of the source of production, or the source of supply of these policies, your office received a commission from the General Accident Fire and Life Assurance Corporation, Ltd., on all policies written by you in behalf of that company.

A. Yes. [78]

Q. And as you testified yesterday, Mr. Urquhart was in your employ? A. Yes.

Q. And was in charge of the Sacramento office?

A. Of Wentz & Erlin.

Q. Of Wentz & Erlin, yes. And when you said that he solicited business, you mean he solicited the agents of your company, is that right?

A. Yes; and brokers.

Q. In other words, he didn't go out to meet any members of the jury or myself and say, "I want your business"? That wasn't his business, was it?

A. That was not his business.

Q. So he wasn't a soliciting agent in the sense of the term as applied to the ordinary agent that you designated to get business from the clients, and then having the policies written?

A. In that sense he was not.

Q. Mr. Wentz, you stated in answer to a question by Mr. Scott that the Mercantile of New York was fire insurance, also auto insurance, in connection with fire and theft, is that right? A. Yes.

Q. The Potomac Insurance Company was also fire and auto fire and theft? A. Yes.

Q. The Scotch Underwriters of Caledonia were auto only, as far as fire and theft? A. Yes.

(Testimony of Walter B. Wentz.)

Q. The United States Shippers were also auto for fire and theft? A. Yes.

Q. The Seaboard Company was a bond company, where you wrote bonds for various cases?

A. Yes.

Q. So that the only company that you had which insured for public liability, collision insurance, and property damage, was the General Accident Fire and Life Assurance Corporation, Ltd.?

A. That is subject to this one correction——

Q. All right, correct me.

A. The fire companies also wrote [79] collision insurance, but the General Accident was the only company which would issue a policy for liability for personal injury.

Q. All right. In order to get this matter straight, is this true: that the General Accident Fire and Life Assurance Corporation, Ltd., the plaintiff here, was the only company that you represented which wrote insurance for public liability—I will put it that way? A. Yes.

Q. In other words, the closures included in Exhibit No. 1 here, the policy of insurance in question?

A. Yes, sir.

Mr. Goldstein: That is all.

Mr. Scott: That is all, Mr. Wentz.

It is my understanding, your Honor, that counsel wishes to cross examine Mr. Fereva no further at the present time.

Mr. Goldstein: No further at this time.

Mr. Scott: The plaintiff rests.

(Plaintiff rests.)

Mr. Goldstein: Now, if your Honor pleases, in order to keep the record straight, I desire at this time to move the Court that the testimony which was elicited from Mr. W. B. Wentz yesterday afternoon under Section 2055, as far as it went, be made a part of the Defendants Dickinsons' case, and that it be considered so for all purposes. That will obviate the necessity of my going over the same ground.

Is that agreeable, counsel?

Mr. Scott: It is agreeable.

Mr. Goldstein: And in line with that, if the Court pleases, I desire to have the record show that the Defendants Charles Gromer Dickinson and Doris May Dickinson have introduced in evidence as exhibits thus far, Exhibit A, which is a certified [80] copy of the power of attorney of Wentz & Erlin as the general agents for the plaintiff corporation in California, dated the 12th day of May, 1931; as Exhibit B there was introduced in evidence a certified copy of the notice of appointment of L. K. Fereva as an agent for the plaintiff corporation, the General Accident Fire and Life Assurance Corporation, Ltd., Perth, Scotland; and as Exhibit C there was introduced in evidence——

The Clerk: We have no C.

Mr. Goldstein: Or we make, as part of our case, Exhibit No. 4 of the plaintiff's case, which I gave to Mr. Scott, which is a certified copy of the license issued by the Insurance Commissioner of the State of California on July 1, 1939, and ending July 1,

1940, which is the insurance agent's license required under the provisions of the Insurance Code.

The Court: Admitted.

The Clerk: Are you offering that as your exhibit?

Mr. Goldstein: Yes.

The Clerk: It is Defendants' Exhibit C.

(The document heretofore marked Plaintiff's Exhibit No. 4, was also marked Defendants' Exhibit C in evidence.)

Mr. Goldstein: If the Court pleases, at this time also, in view of the questions put by counsel to Mr. Wentz as part of his case, I offer in evidence the notice of appointment of Mr. L. K. Fereva by the Potomac Company, a certified copy of that appointment, which was objected to yesterday.

Mr. Scott: And again today, as irrelevant, immaterial and incompetent.

The Court: The objection is sustained.

Mr. Goldstein: Now, at this time, if the Court pleases, I desire to call Mr. W. B. Wentz, under Section 2055, as a witness [81] on behalf of the Defendants Dickinson, not being bound by his testimony, the same as under cross examination.

Mr. Scott: Might I so the record may be clear in the matter, ask also whether he is also called under that section as a witness on behalf of the Defendant Fereva and the Defendant Kemp?

Mr. Hogle: Yes.

Mr. Goldstein: I assume that will apply to Mr. Fereva.

Mr. Scott: And how about the Defendant Kemp?

Mr. Goldstein: Yes; so understood.

WALTER B. WENTZ,

recalled for the Defendants; under Section 2055 C.C.P.; previously sworn.

Direct Examination

Mr. Goldstein: Q. Mr. Wentz, under date of December 5th you were served with subpoena duces tecum issued out of this court, and I believe you were served by the United States Marshal of San Francisco, to produce——

Mr. Scott: Just a moment. He was served.

Mr. Goldstein: Yes; to produce certain records in connection with the account of your firm with Mr. L. K. Fereva.

Q. Have you those records with you?

A. Yes, sir.

Q. First of all, Mr. Wentz, I will ask you to state to the jury as to what you mean by a soliciting agent.

A. I distinguish between the soliciting agent and the general agent, that the one solicits the contract, and the second one concludes it—the general agent concludes it.

Q. Well, as far as you are concerned, Mr. Wentz, is there any difference between a soliciting agent and an agent of the plaintiff corporation?

A. Well, there is a difference. We call one [82]

(Testimony of Walter B. Wentz.)

kind of an agent a local agent; another agent is a special agent. An agent is a general term.

Q. All right.

A. The general agent is an agent.

Q. I understand—when you speak of a general agent, you mean a person in your position, holding a power of attorney for the corporation, to sign the policies and receive services of summons and complaints after suit, is that right? A. Yes.

Q. But there is no difference in your appointments between a soliciting agent and the one who makes contracts, isn't that true?

A. There is this: When we appoint a soliciting agent we may have no written contract with him.

Q. Do you ever appoint a soliciting agent?

A. You have to appoint them, under the law as it has been explained to me.

Q. Do you appoint them as soliciting agents, or as agents?

A. We appoint them, in my understanding, as soliciting agents.

Q. Well, Mr. Wentz, take a look at this appointment you signed under your own hand and seal on the 1st day of July, 1937, and tell the jury, if there is a difference between a soliciting agent and an agent, why you didn't appoint Mr. Fereva as a soliciting agent rather than as an agent, as under your appointment.

A. Because there is no provision in law which would set up any different procedure. Whether I

(Testimony of Walter B. Wentz.)

want to appoint a soliciting agent, or general agent, or what-not it might be, I have to fill out that form.

Q. That is true. That is what I am trying to get at. Isn't it true that in order for you to appoint an agent for your company under your power of attorney and under the Insurance Code, you would have to appoint him an agent without qualification, as you did here?

A. That is a matter of law.

Q. I am asking whether you did that, Mr. Wentz.

A. Yes, I signed [83] that form.

Q. And the form you signed was that you appointed Mr. L. K. Fereva as your agent within the State of California, at Lincoln, California. That is the way you filled it out. Have you the record of the policies that were written by you for Mr. Fereva during the period stated in the subpoena?

A. I am not sure of the period stated in the subpoena, but I have here the original loose ledger sheets from the Wentz & Erlin ledger, which runs from sometime in 1934 up until today.

Q. Very well. May I see that, sir?

A. (Witness hands documents to Mr. Goldstein.) Attached to that is my record of his appointment as an agent.

Q. Now, you have handed me, sir, a number of ledger sheets starting in with April, 1935.

A. I think it runs back to December, 1934, on some of it.

(Testimony of Walter B. Wentz.)

Q. This is the first year, is it not (exhibiting document to the witness)?

A. Look on the back.

Q. On the back. Pardon me. Just a moment. Yes, December, 1934. A. December, 1934.

Q. December, 1934, running along down to 1940, is that correct?

Mr. Scott: I think that is correct, Mr. Goldstein.

Mr. Goldstein: Down to 1940?

Mr. Scott: Yes. I think he ceased to be an agent in 1940.

Mr. Goldstein: Yes. This ledger sheet——

Mr. Scott: Pardon me. Might I make a suggestion and a request, your Honor, coupling the two together? For the reason that this is the original, and sole and only record of the company's business during the period of these years, and for the reason that we are all the time required to respond to State and Federal authorities by having these in our custody, might I respectfully [84] suggest and request that counsel read into the record the items as to each policy which he considers material, and that Mr. Wentz be allowed to preserve his records and take them back with him? I make that suggestion because they are not very numerous, although the sheets are rather large.

The Court: Will that be agreeable?

Mr. Goldstein: I have no objection at all, Mr. Scott, except it will be a tedious proposition, and I will give an alternative suggestion, your Honor,

(Testimony of Walter B. Wentz.)

that we offer in evidence the account with the privilege of withdrawing the same immediately at the conclusion of the case, after the reporter has had an opportunity of copying the record. I think that will be far better, because otherwise I will have to read all these policies, and they run into a considerable number.

Mr. Scott: The point is that even taking them from that date, over a period of ten or more years, they don't run into a considerable number. In other words, from this one sheet there are about twelve——

The Court: Mr. Goldstein, read them into the record.

Mr. Goldstein: Very well.

Q. I notice that you have, on December 24, 1934, you carried over an account here of a balance due of \$451.10. I take it that that is from the account of the previous years, is that correct?

A. I would say so.

Q. Yes. And this account that you have here starts in with December 24, 1934, policy issued to L. K. Fereva, No. 888, \$95.74, liability, 20 percent. Does that mean the commission? A. Yes.

Q. That means the commission on that?

A. Yes, sir.

Q. January, 1935—November 24th, Policy No. 533282, Bessie K. Fereva, an endorsement, "No premium"; November 24, 1935, an [85] endorsement to James R. Smith, no premium; on January 25th, Policy No. 85084 and 14102, L. K. Fereva,

(Testimony of Walter B. Wentz.)

fire and theft, \$2.01; and on January 7th another policy, 85084, 14118, \$1.00; February, 1935, Policy No. 85084-14122, L. K. Fereva, \$1.00; 85084-14123, ditto, \$1.00; 85084-14121, L. K. Fereva, \$1.45. These small amounts, Mr. Wentz, that I just read, are coverages for about a day, or portions of a month, is that right?

A. I might answer you if I could see that sheet.

Q. Yes, I will be glad to show it to you. Just tell the jury what those coverages are, for a dollar, or a dollar and forty cents.

A. They have to do with automobile fire insurance altogether, and might be anything; might be addition of comprehensive coverage; might be anything. I can't verify it.

Q. Or it might be coverage or insurance for a day, or two days?

A. Yes.

Q. Depending on how long the coverage was on?

A. Possibly might be. I wouldn't be personally familiar with those automobile fire policies, anyway.

Q. March 22nd, Policy No. 53283, James R. Smith, liability, 20 percent, \$21.85; property damage, 25 percent, \$5.00; collision, 30 percent, \$23.75. When I say liability, that means the commission that was paid to Mr. Fereva?

A. When you say 20 percent—

Q. That is what I mean, when I say 20 percent—when I say liability 20 percent. The property damage, of course, is a different item, and the collision insurance?

A. Yes.

(Testimony of Walter B. Wentz.)

Q. March 3, 1935, Policy No. 984, L. K. Fereva, property damage, \$145.08. That, I take it, is a property damage policy? It is under "Property Damage."

A. May I see that?

Mr. Scott: Mr. Goldstein, might I ask if this J. R. Smith, was he at that time a partner of Fereva? [86]

Mr. Goldstein: Was he?

Mr. Hogle: What?

Mr. Goldstein: James R. Smith, was he a partner of Fereva?

Mr. Hogle: No.

Mr. Goldstein: No.

The Witness: No; that is under the property damage head, but I think the intention is to put it under the 25 percent commission head, because it is a fire policy; it is a Mercantile fire policy.

Mr. Goldstein: Q. At any rate, that policy was issued to James R. Smith?

A. You are talking about the one to Fereva?

Q. I mean to Fereva, with the premium on it of \$145.08.

A. I think that was a fire policy.

Q. Now,—

A. Policy No. 982, L. K. Fereva, yes.

Q. \$59.08 under liability, 20 percent. That is a liability policy?

A. I am not sure.

Q. Yes, it is. He gets a commission of 20 percent, see?

A. Yes.

Q. March 14th, Policy No. 10329-S, L. K. Fereva, Fire and Theft. It is marked 15 percent, \$5.27.

(Testimony of Walter B. Wentz.)

That means there is a policy for fire and theft, and his commission was 15 percent, is that right?

A. Apparently so.

Q. Isn't it so? Not apparently. Take a look at it.

A. I am in rather deep water when it comes to keeping books.

Q. I am not asking you about bookkeeping, Mr. Wentz. I am asking you about the premium on insurance put on your books, and the commissions paid to Mr. Fereva from your office.

A. Where is it?

Q. March 14th (indicating).

A. \$5.27 fire and theft?

Q. Yes, under the 15 percent item. That means he gets a commission [87] of 15 percent on that item, isn't that right?

A. That is what it means.

Q. March 14th, L. K. Fereva, liability, 20 percent; it is No. 888, L. K. Fereva, \$66.22 under liability, and \$62.64 under property damage. That means that on that premium he gets 20 percent under liability and 25 percent on the property damage?

A. Yes.

Q. Policy No. 23326, R. & S. Garage, liability, 20 percent, \$17.25, property damage, \$5.00. That is under that column (indicating). In order to save time, whenever I say "liability 20 percent," that means that the commission is 20 percent?

A. Yes.

(Testimony of Walter B. Wentz.)

Q. If I say "property damage," that means 25 percent; and if I say "fire and theft," that is 15 percent. Those are the commissions paid under these columns.

A. It would seem so.

Q. September 12, 1935, Mercantile Fire, premium, \$118.30. Just what does that mean, Mr. Wentz? I have never seen these records before, and I am not entirely familiar with them.

A. I don't see it.

Q. On the right-hand side there (indicating).

A. Oh, this up at the top, huh?

Q. Yes.

A. December—I don't see that.

Q. Right here (indicating). It says, "Mercantile Fire, December 12, 1935, \$186.20."

A. That looks to me very much like—I can't figure that out at all, what it means. As a matter of fact, it is listed over—that premium, apparently, \$186.30, should have been charged to General Accident. Wait a minute, wait a minute; now, wait a minute. That is Policy No. 888, Mercantile Fire. He has got it under liability and property damage.

Q. Uh-huh (affirmative).

A. Well, the only way I can explain that item is that these columns are not intended so much to refer to the liability and the property damage as they are to the amount [88] of commission, and the accountant would put it in the column which applied to the amount of commission that Fereva would get.

(Testimony of Walter B. Wentz.)

Q. So that the items on the right-hand side would be the total of the commission?

A. Yes, and these items would not necessarily mean, by putting them in that column, that they covered liability or property damage, but would only have reference to the fact they were subject to these commissions.

Q. So that this item of September 12, 1935, of \$186.30, shows that he received a commission of 20 percent on \$95.74, and 25 percent on \$90.56?

A. Yes; and apparently they were straight fire insurance.

Q. Now then, going to the next stage: March 15, 1935, Policy No. 999, L. K. Fereva, property damage, \$72.54 in the 25 percent commission column. That is a policy which was issued on which he got 25 percent? A. Yes.

Q. And on the same date, Policy No. 85084, fire and theft, 15 percent, \$2.86. In April, 1935, again Policy No. 85085-14125, L. K. Fereva, \$1.00, under fire and theft. March 15, 1935, Policy No. 984, L. K. Fereva, property damage, \$145.08. That is under 25 percent commission. That would mean he got a commission of 25 percent on that?

A. Yes.

Q. May, 1935—May 10th, Policy 321198, L. K. Fereva, compensation, \$38.00. There was a commission on that he also received on the compensation insurance?

A. He should have got 10 percent. Is there a column for 10 percent?

(Testimony of Walter B. Wentz.)

Q. There is no column mentioned here as to commission, but I understand he did get a commission on these compensation policies, also? That would be 10 percent? A. Yes.

Q. May 10th, Policy 85085-14127, L. K. Fereva, fire and theft, \$1.86. May, 1935, dated 2-23, Policy No. 85084-14130, L. K. Fereva, [89] \$1.00, fire and theft. March 28th, Policy 85085-14132, L. K. Fereva, fire and theft, \$1.00. The same date, Policy 85084-14133, L. K. Fereva, \$1.00, fire and theft.

Mr. Scott: Would your Honor forgive me if I looked over counsel's shoulder?

Mr. Goldstein: No objection at all.

Mr. Scott: I just wanted to check something that occurred to my mind.

Mr. Goldstein: No objection at all.

Mr. Scott: Might I interpolate a question with a view to straightening a difficulty in my own mind, and it possibly may help us along?

Mr. Goldstein: I have no objection.

Mr. Scott: Q. Mr. Wentz, taking for example in April of 1935, and in May of 1935, I notice a column, "Assured, fire commissions, L. K. Fereva," running down through the two months. Now, does that mean that the policy is to Fereva himself as the assured?

A. That would mean that Fereva was the insured, yes.

Q. Now, another question. I think we can save a little time.

Mr. Goldstein: Very well.

(Testimony of Walter B. Wentz.)

Mr. Scott: Q. I notice here that in the month of April there is "L. K. Fereva, 85084-14120, L. K. Fereva, \$2.85," then across is Merchants Automobile," then the entried of \$1.00 premium. In the next line there is the same number, \$85084," ditto——

Mr. Goldstein: No; it is "14125."

Mr. Scott: Yes, with a new number in extension, "14125"—I am awfully bad at figures, bad in keeping accounting books, and possibly keeping money——

The Court: That is very odd for a Scotchman.

[90]

Mr. Scott: Scotchmen are very much out of form at this. Now, there is in extension an entry of \$1.00, which is carried across. Now, in May we have one, two, three items of a dollar, all having this controlling number, 85084.

Mr. Goldstein: And 85.

Mr. Scott: And 5.

Q. Now, may I ask you, does that refer to one policy to Fereva going through the months covering his business as an auto dealer, and are those charges as cars move, come in and out under the coverage? A. I would think so.

Q. Isn't that the explanation?

A. I would think so, yes.

Q. In other words, it doesn't mean there are different policies represented by each item, but the item is a broad coverage. Have you a form which you used, Mr. Goldstein?

(Mr. Goldstein hands document to Mr. Scott.)

(Testimony of Walter B. Wentz.)

Mr. Scott: Q. Might I ask, Mr. Wentz, is it not true that some of these policies are upon an estimated premium which is based upon the volume of business done by the assured?

A. Yes—no—that is—as to this—I am trying to give an understandable explanation of these items. I am of the opinion that they mean this: that with most business we do in the Mercantile insurance Company, auto department, we must have issued to Mr. Fereva what we call a dealer's open policy, whereby we insure against fire insurance the cars on his floor, adding and subtracting as they were added on, and making these charges for the days they were in effect.

Mr. Goldstein: Q. Let me show you that is incorrect, Mr. Wentz, with one item here. I will take June 22——

Mr. Scott: This is the item we are referring to (indicating).

Mr. Goldstein: No, but he said that is a general thing. [91]

Mr. Scott: Yes, but this is——

Mr. Goldstein: Now, as a matter of fact, these dollar items here, isn't this true, that if a man, let us say, puts on coverage on an automobile today for fire and theft—let us say puts on coverage, and he notifies you, but before you have a chance even to issue the policy he sells the car and he charges for the fire and theft insurance from the day he covered it, up to the time it moves out of the place, let us say three days, five days, or two weeks, he receives the premium?

(Testimony of Walter B. Wentz.)

The Witness: How do you mean, he received the premium?

Mr. Goldstein: Q. I mean he pay for the premium?

A. That is correct.

Q. In other words, he never got the policy, but he was covered in the meantime?

A. That would only apply to an automobile dealer.

Mr. Scott: Q. That means, as you say, there was one dealers policy to which all these minor——

A. ——items apply. I think that is so.

Mr. Goldstein: Q. Isn't it a fact these are different policies and different numbers? To show you it doesn't apply, as you say, to one policy, here is No. 14127, \$1.86; 14130, \$2.00; 14133, \$1.00. Why would there be different numbers if it is all one policy?

A. Aren't those numbers prefaced by one number?

Q. No, sir.

Mr. Scott: Just a moment, now, let's see if they aren't.

Mr. Goldstein: There is 85084-14127, L. K. Fer-eva, \$1.86.

Mr. Scott: What is the next number?

Mr. Goldstein: No. 85084-14130, \$1.00.

The Witness: That 85084 seems to follow right on through.

Mr. Goldstein: Q. Let's take the next, 85085-14133, \$1.00. [92] Is there one policy, or more than

(Testimony of Walter B. Wentz.)

one policy? Or isn't it a fact it is interim coverage for the few days that Mr. Fereva covered that car for the time being, and paid you the portion, whatever it was? A. Let me look at that again.

Q. Yes, sir (exhibiting document to witness).

A. I would say it was the one policy, and that there has been a clerical error here, such as we find as we go further on down. That 85084 seems to be pretty consistent. There is only one instance they made it 85085. I think that is simply a clerical error.

Q. So you say your record is in error, is that it?

A. I think so.

Mr. Goldstein: There is one further question I wish to ask before we adjourn, your Honor.

Q. There is one dated June 22, Policy No. 34375, Charles Brockman, liability, 20 percent, \$19.00; property damage, 25 percent, \$5.00; collision, 30 percent, \$17.00; making a total premium of \$41.00. Now, that was issued to Mr. Brockman, and on that policy Mr. Fereva received those various commissions? A. Yes, sir.

Q. That is correct, isn't it?

The Court: Ladies and gentlemen, we will recess until two o'clock this afternoon. Please remember the admonition heretofore given you by the Court.

(Thereupon a recess was taken until 2:00 o'clock p. m.) [93]

Afternoon Session

2:00 o'clock P. M.

The Court: Will counsel stipulate the jurors are all present?

Mr. Goldstein: So stipulated.

Mr. Scott: Yes, your Honor.

WALTER B. WENTZ,

Resumed.

Direct Examination (resumed)

Mr. Goldstein: Q. My last question just before the noon recess related to this Policy No. 34375, Charles Brockman, dated June 22, 1935, liability, 20 percent, \$19.00; property damage, 25 percent, \$5.00; collision, 30 percent, \$17.00, and marked "General." That means the General Accident, doesn't it? A. Yes, sir.

Mr. Goldstein: Your Honor, in order to save time I am going to ask Mr. Scott to stipulate to the number of these insurance policies that were issued on which commissions were paid, and I will be content with that.

Will you count these with me, Mr. Scott?

Mr. Scott: If your Honor pleases, I made an analysis during the noon recess, and I would make this suggestion—I have had somewhat more experience in insurance matters than my friend——

Mr. Goldstein: I will concede that.

Mr. Scott: ——but I myself am no expert; but if Mr. Wentz and Mr. Goldstein and I could take

(Testimony of Walter B. Wentz.)

just a few moments I can show this: Starting in January—if counsel will follow—January, 1935: In that month one policy was issued in the Mercantile Auto; February of 1935, no new policy was issued; charges were made upon the garage—the dealer's policy; in March one new—two new policies issued, No. 983, 103298, both in the Merchants Auto; in [94] April there was one policy, the 10th, 3361, in the Merchants Auto; in May, one policy, 321198, in the General. All of those policies up to date were issued to Fereva. In July of 1935—

Mr. Goldstein: Just a moment, Mr. Scott; you overlooked the policy to James R. Smith in March, 1935, in the General, on which the premium was credited and paid, public liability and property damage.

Mr. Scott: That was a debit. It was returned and cancelled. That was a policy existing before January, 1935.

Mr. Goldstein: However, it was a policy issued—

Mr. Scott: No, it wasn't issued in that month. It is cancelled off.

Mr. Goldstein: Will you stipulate it was issued prior to the time—

Mr. Scott: Yes; prior to 1935, and cancelled off.

Mr. Goldstein: That is satisfactory.

Mr. Scott: July, 1935, two policies, in the General and Potomac, were issued to Charles Brockman—no, one policy; there are two charges.

Mr. Goldstein: Yes.

(Testimony of Walter B. Wentz.)

Mr. Scott: In August policies were issued to J. O. Hoff, and to Roy Vance, both in the Merchants Auto. Policy to O. K. Semeron in K. A.

Q. Might I ask you what the initials "K. A." stand for? A. What is that?

Q. K. A.

May I show that to him?

Mr. Goldstein: Yes.

Mr. Scott: Q. That was in August. "O. K." or "O. E. Semeron, K. A." What does that mean?

A. You have got me; I don't [95] know.

Mr. Goldstein: Well, let's pass it, Mr. Scott, for the sake of time. I will not insist upon it. Let's pass it.

Mr. Scott: In September, the next month, a policy was issued to N. A. Gunnion in the Merchants Auto, and W. H. Hanneman——

Mr. Goldstein: Harmon.

Mr. Scott: H-a-r-m-o-n, in the Merchants Auto, and E. E. Fuller, in the Merchants Auto——

Mr. Goldstein: No; E. E. Fuller is in the General.

Mr. Scott: In the General.

Mr. Goldstein: Yes. Liability, \$19.00; property damage, \$5.00; collision, \$21.00.

Mr. Scott: Pardon me. E. E. Fuller in the General. Mrs. Agnes Baker——

Mr. Goldstein: Yes, Mercantile.

Mr. Scott: ——in the Mercantile.

Mr. Goldstein: And E. E. Fuller again.

(Testimony of Walter B. Wentz.)

Mr. Scott: E. E. Fuller again—it is the same policy, you will notice.

Mr. Goldstein: Yes; it is in the Potomac——

Mr. Scott: That was in the Potomac, not the General. It was first put in the General.

Mr. Goldstein: No, it is a different policy. The first policy to Mr. Fuller, 3461—this is fire and theft—there was no fire and theft on the——

Mr. Scott: Q. That is a combination policy, is it not, Mr. Wentz? A. What policy?

Q. The General and Potomac issued a combination policy, did they not?

A. Yes, combination.

Mr. Scott: So it is one policy. In October, no policies. In [96] November, Policy 23442——

Mr. Goldstein: L. K. Fereva.

Mr. Scott: Again to Mr. Fereva in the Merchants Auto.

Mr. Goldstein: No, no, wait a minute—General, liability, \$153.50; property damage, \$30.00. It is in the General.

November 24th, Policy No. 23443, L. K. Fereva, liability, \$153.50; property damage, \$30.00, in the General.

Mr. Scott: In the General. Now, might I summarize, with counsel's consent, that in the year 1935, one, two, three, four policies were issued through the Fereva agency in the General, and in the cases of Fuller and Brockman they were issued to people other than Fereva, and the others were to himself?

(Testimony of Walter B. Wentz.)

Mr. Goldstein: There is one other, in November—J. S. Hoff, collision insurance.

Mr. Scott: That is a cancellation. When they appear there in the red, counsel, we are in the red. That is one thing about bookkeeping I do know.

Mr. Goldstein: I have no objection to that, counsel.

Mr. Scott: In 1936: In January there was a policy in the Merchants Auto. February, a policy to H. S. Kuckram in the Merchants Auto. In March, two policies, to Fereva in the Merchants Fire, and one policy to Ishor Sigh—probably an Irishman—in the Merchants Auto.

Mr. Goldstein: Are you sure he wasn't a Scotchman?

Mr. Scott: He might be a Scotchman; I don't know.

The Court: May I suggest, Mr. Scott, we have several Irishmen on the jury.

(Discussion.)

Mr. Scott: In April, F. A. Warren, in the General. In May, L. K. Fereva in the General, this being a renewal, or a new [97] dealers policy; and in May, Fereva in the Merchants Auto. In June, Mrs. Florence Christianson in the General. In July—

Mr. Goldstein: Just in order to get that clear, Florence Christianson is for liability and property damage in the General.

Mr. Scott: Yes, in the General.

Mr. Goldstein: There is another policy in June to Mr. Fereva, a compensation policy.

(Testimony of Walter B. Wentz.)

Mr. Scott: Yes. In July, Fereva, collision, in the Merchants Auto. And Archie J. Christianson in the General.

Mr. Goldstein: That is also for liability and property damage.

Mr. Scott: Yes. In August, O. E. Semeron, in the Merchants Auto.

Mr. Goldstein: Collision.

Mr. Scott: And Fereva in the Merchants Auto.

Mr. Goldstein: That is fire and theft.

Mr. Scott: Yes, that is fire and theft. In September, no policies. In October, C. A. Olsen in the General.

Mr. Goldstein: Liability and property damage.

Mr. Scott: In November, no policy; and in December, a policy to Fereva in the Merchants Auto, and one covering the R. & S. Garage in the General, liability, \$125.45; property damage, \$26.50. And the General were liability, rather than fire and theft.

So to summarize, in the year 1936, one, two, three, four, five policies were issued in the General to persons other than Fereva.

In 1937: In the month of January, 1937, no policy. In February, Policy No. 103167, insuring the Fereva Chevrolet Company in the Merchants Auto. In March, two policies in the Merchants Auto for L. K. Fereva and one for O. E. Semeron.

[98]

Mr. Goldstein: One of those policies is for liabil-

(Testimony of Walter B. Wentz.)

ity, and one for property damage, and these two policies to Fereva, 301 and 302.

Mr. Scott: Yes. They were, however, in the Merchants Auto, and not the General.

Mr. Goldstein: Yes.

Mr. Scott: April, no policies. May, Policy No. 353042, L. K. Fereva, insured in the General, and a policy to F. A. Warren, insured in the General.

Mr. Goldstein: That is for liability and property damage.

Mr. Scott: That is for liability and property damage. In June, no policy. In July, A. J. Christianson, in the General.

Mr. Goldstein: Policy No. 10301, in June.

Mr. Scott: That is the continued coverage on the garage he had above.

In August, L. K. Fereva, in the Merchants Auto.

Mr. Goldstein: Fire and theft.

Mr. Scott: September, October and November, no policies. In December——

Mr. Goldstein: Just a minute——

Mr. Scott: The next is December, 991200, L. K. Fereva, liability, in the General, and at the same time a policy in the Merchants Auto.

Mr. Goldstein: Just a minute. In order to keep this record straight, on this Policy 991200, on the liability, on the basis of 20 percent, \$112.16 is the premium, and on the property damage, on the basis of 25 percent, \$26.50 is the premium. That is the policy you just mentioned.

(Testimony of Walter B. Wentz.)

Mr. Scott: And on that policy, please note, and on all of the policies, apparently Fereva got the agent's commission. [99]

Mr. Goldstein: Yes.

Mr. Scott: That is somewhat flagrantly in the face of a certain statute, the commission paid Fereva.

Mr. Goldstein: We aren't concerned with that. I just want to have the record show there was that policy of December, 1937, and another policy, 105431, fire and theft and collision, in the Mercantile, also in the percentage column for commission. That is in December, 1936.

Mr. Scott: To summarize: In the year 1937 three policies—four policies were taken out in the General by Fereva; three of them were for persons other than himself. In 1938: In January a policy to Ralph Burgess in the Merchants Auto; one to Savage in the Merchants Auto. February, nothing. In March, one for the Dalton Motors, Inc., in the Merchants Fire, to Fereva in the Merchants Fire, and one to Alvio Galvianni, which is in the New General. Pardon me——

Q. What is meant, Mr. Wentz, by this entry, "New Gen."? Would that be a new policy in the General?

A. I would say a new policy in the General Accident.

Mr. Scott: In April, no policy whatever. In May, Policy No. 371980, L. K. Fereva, insured in the General. June and July, no policy.

(Testimony of Walter B. Wentz.)

Mr. Goldstein: There is one policy in July.

Mr. Scott: You notice that is an audit.

Mr. Goldstein: Pardon me.

Mr. Scott: In August, no policy. In September, a policy to L. K. Fereva, insured in the Merchants Auto. October and November, no policy. And in December there is an entry, "Fereva Chevrolet Company," with the notation, "non-reward."

Q. What does that mean, Mr. Wentz?

A. Well, that was to [100] distinguish between a policy written with a safe driver reward and without it, to distinguish between the matter of commissions.

Mr. Scott: Now, on that policy there is no entry then, as to the company in which that is written. That would be in what company?

Mr. Goldstein: That is the General.

The Witness: That was the—that is his garage policy, his garage liability policy.

Mr. Scott: Q. Would that be in the General?

A. That would be in the General Accident, yes.

Mr. Goldstein: This policy that you just referred to, December 16, 1938, I want to get the number—991262—December, 1938, 991262, liability, \$126.11; and property damage, \$26.50, included in the items of 20 percent for liability and 25 percent for property damage; and that is in the General.

Mr. Scott: Now for the next year, in 1939: In January, Policy No. 13027.

Mr. Goldstein: No. 13027.

Mr. Scott: To Fereva Chevrolet Company, in the General. February, no policy. March, two policies,

(Testimony of Walter B. Wentz.)

to Fereva, in the Merchants Fire. April, no policy. May, Policy No. 391987, Fereva, in the General. June and July, no policy. August, O. W. Campbell——

Mr. Goldstein: Liability and property damage.

Mr. Scott: Was not taken, so we cross that one out. In August, that same month, three policies to L. K. Fereva in the Merchants Auto. September, one policy to the same, in the Merchants Auto. And October and November, no policies. And in December——

Mr. Goldstein: Just a minute. November, 1939, there is one here, G. W. Campbell. [101]

Mr. Scott: Those are cancellations; again we are in the red ink. You see this cancellation?

Mr. Goldstein: All right, I will let it go.

Mr. Scott: We will let it go.

Mr. Goldstein: December.

Mr. Scott: December 16, Policy 1556——

Mr. Goldstein: Liability——

Mr. Scott: Fereva Chevrolet Company, non-reward.

Mr. Goldstein: That is in the General; I have the policy here.

Mr. Scott: I assume that would be the General.

Mr. Goldstein: That is the General; I have the policy here. Liability, \$102.90, and property damage, \$29.50, under these respective columns.

Mr. Scott: So that to go back to 1939—and it will be noted, and I assume stipulated, that in the year 1939 Fereva obtained no policy whatever with

(Testimony of Walter B. Wentz.)

any of the companies in the name of any insured other than himself and the Fereva Chevrolet Company. The only policy was that of Campbell, which was issued and cancelled. In 1940: In January and February, no policies. In March, Policy 6570 and 6569, L. K. Fereva, insured in the Merchants Fire. In April, no policy. In May, a policy to L. K. Fereva in the General. In June, no policy. July, no policy. In August, a policy, Fereva again the insured, in the Mercantile.

So that, to summarize: In the year 1940 Fereva wrote only one policy in the General, and in all the policies that were written he himself was the named insured, and further, from the year 1935 to the year 1940 the record shows that Fereva wrote nine policies in the General for people other than himself——

Mr. Goldstein: For my purposes—— [102]

Mr. Scott: ——a period of six years.

Mr. Goldstein: For my purposes I will take the figures given.

Mr. Scott: I will state I spent the entire recess in checking, and I believe the figures are correct.

Mr. Goldstein: Q. Mr. Wentz,——

Mr. Scott: Will you show me those papers? I might stipulate.

Mr. Goldstein: Yes. I have the file that you produced in answer to the subpoena duces tecum. handed me so kindly by Mr. Scott.

(Testimony of Walter B. Wentz.)

Q. These papers that you brought up in connection with the correspondence pertaining to Mr. Fereva—you have an inter-communication system between Mr. Urquhart and your office, do you not? In other words, you write notes back and forth, or he would give notes to you? A. Yes.

Q. I will show you one, for instance, dated October 25, 1935, by Mr. R. F. Urquhart. That is his handwriting, is it not?

A. I am not familiar with his handwriting.

Q. You are not familiar with it?

A. It seems to be addressed to Mr. Brown.

Q. Do you know Mr. Brown?

A. Mr. Brown is in my employ.

Q. Did you say now you aren't familiar with Mr. Urquhart's handwriting?

A. I am not personally familiar with it. I take it for granted it was his communication.

Mr. Goldstein: I simply offer it for identification.

(The pencil memorandum referred to was marked Defendant's Exhibit D for identification.)

Mr. Goldstein: Q. I will show you a copy of a statement of the General Accident Fire and Life Assurance Corporation, Ltd., being made out to you, Wentz & Erlin, and sent to Mr. Fereva for one of the policies—let's see; this one shows for 1937—and [103] see if you can identify that.

Mr. Scott: I might respectfully suggest, your

(Testimony of Walter B. Wentz.)

Honor—I don't know whether counsel has noted it—but this policy has to do with workmen's compensation——

Mr. Goldstein: No; it is auto sales and garage, it is right on top of it. That is what I am getting at. It is auto sales and garage, and the premium on it——

Mr. Scott: Oh, yes, I see.

The Witness: Just what is it you want me to do with respect to this paper, Mr. Goldstein?

Mr. Goldstein: Q. Is that a copy of the formal statement which you sent for policies that were issued to him in the General Accident?

A. No; this form is issued by the corporation to our agency.

Q. I see.

A. It undertakes to set out the fact that we had carried this garage liability policy for the Fe-reva Chevrolet Company from November, 1935, to 1936, and that it had earned a certain premium during that time. That premium had been obtained—those figures had been obtained by an auditor who was employed by the corporation, and he had set them up in his report to the corporation; the corporation had accepted those figures and sent us this paper from Philadelphia to set up as a charge on their books. It so happens that this makes no charge, because the calculation indicates that the advance premium had taken care of the situation.

Q. At any rate you have here—this shows that it was based upon the payroll of his garage?

(Testimony of Walter B. Wentz.)

A. On the payroll, yes.

Q. Now, I am going to show you a letter dated January 14, 1938, from Mr. R. F. Urquhart, addressed to Mr. George Keil, care of Wentz & Erlin, and ask you to state whether that letter was written on your stationery, and whether you recall that letter? [104]

A. I would not personally recall it, but it seems to be something that would be in the ordinary course of business. It is written on the letterhead provided for Mr. Urquhart's use, and it is addressed to our office manager.

Q. Well, Mr. Wentz, am I to understand that you have never seen these letterheads that were used by your office?

A. I didn't say I haven't seen them.

Q. Did you ever see, on this letterhead, "R. F. Urquhart, Resident Agent, Sacramento District Office, Ochsner Building, 719 K Street, Sacramento, California"?

A. Yes, I have seen that; yes.

Q. You have seen it? A. Yes.

Q. Now, you have stated Mr. Urquhart didn't have any duties. Isn't it a fact that in this letter he made certain suggestions about removing the office from where you were located in Sacramento to some other place?

A. I haven't read the letter.

Mr. Goldstein: If the Court please, I am going to offer in evidence that letter as bearing upon the duties and also the authority of the man who ap-

(Testimony of Walter B. Wentz.)

appears on there as the resident agent, a letter addressed to his employers, Wentz & Erlin.

Mr. Scott: I object to it as irrelevant, incompetent and immaterial, so far as the issues in this case are concerned.

Mr. Goldstein: I also want to offer it in evidence to show the letterhead with his title on it.

Mr. Scott: That is a letter written in 1938, and has to do with the change of location in the office, and has to do with a fire. I can't see how even in the remotest degree the letter could have anything to do with the issue of whether Mr. Fereva gave notice. This is a communication from our agent up here, who seems to have been in trouble and wants to change the location. As far as the letterhead goes, I have no objection to that. [105]

The Witness: Pardon me, Mr. Scott, but that letter is new to me; the first time I have seen it. But it seems to me to have been written about the removal of the location by a man by the name of Frisbee, who has a garage policy with us, A. G. 991000.

Mr. Goldstein: That is still more important. That is exactly why I want to offer it. May I show the letter to your Honor?

Mr. Scott: Will you continue, Mr. Wentz?

The Witness: My explanation of the letter?

Mr. Scott: Yes. What he wants now is to have the policy covering the location that was burned changed to the new location, is that it?

The Witness: I would judge from that letter

(Testimony of Walter B. Wentz.)

we had issued a policy to a man named Frisbee, and that Frisbee had a fire on his premises and was changing the location, and Mr. Urquhart was writing in to my office, but addressed to the office manager, Mr. Keil, on the subject of endorsing that policy to change the location, which was an endorsement we would have to execute in our office in San Francisco.

Mr. Scott: Q. In other words, Urquhart had no authority to issue it himself?

Mr. Goldstein: Just a minute, Mr. Scott. If you want to testify, I will let you take the stand any time you want, and I will cross examine you.

Mr. Scott: I am at your service any time you want.

The Court: I would like to have it quiet so I can read the letter.

Mr. Goldstein: I beg your pardon, Judge.

The Court: This letter seems to deal with a fire and the matter of a new location for Frisbee. What is your purpose in offering it? [106]

Mr. Goldstein: My purpose, your Honor, first of all, is to show that he was dealing for Wentz & Erlin in their employ, and show his title on this one, as resident agent, and then show the change—this is January 14, 1938—and I will have some other letters here later on to show he was district representative. In other words, the title is on the letterhead.

The Court: Is there any question about that?

Mr. Scott: Not the remotest question about that.

(Testimony of Walter B. Wentz.)

That has been the testimony of Mr. Wentz, and would be that of Mr. Urquhart.

The Court: That is already admitted, as I understand the testimony given here.

Mr. Goldstein: But your Honor, I have to show the extent of his authority in order to prove ostensible agency, and the best evidence is what he did for this firm.

Mr. Scott: May I point out that what he did for this firm, Frisbee, is this: Frisbee, being in trouble, having been burned out of one place and having to go to another, he, for Frisbee, writes in to the company and asks the company to transfer the policy to a new location. It is purely the act of an agent or company representative here, who had no authority to do it himself, so I submit the matter is not competent to prove what the gentleman offers it for, but tends to substantiate the other testimony to the direct opposite of what he contends.

(Further argument.)

Mr. Goldstein: I will ask it be marked for identification at this time.

(The letter referred to was marked Defendants' Exhibit E for identification.)

Mr. Goldstein: Q. Now, Mr. Wentz, I have a copy of a letter dated October 30, 1936, addressed to Mr. R. F. Urquhart by G. F. K., [107] which means George F. Keil, does it not? A. Yes.

Mr. Goldstein: And I take it you have no objection to introducing this copy and the reply of Mr.

(Testimony of Walter B. Wentz.)

Urquhart to Mr. Keil pertaining to Mr. Fereva? I don't think there will be an objection as to that.

Mr. Scott: None in the world, your Honor.

Mr. Goldstein: If your Honor pleases, I desire to offer this in evidence as one exhibit, the letter from Wentz & Erlin to Mr. Urquhart, dated October 30, 1936, and the reply, dated October 31, 1936.

The Court: Admitted.

Mr. Scott: I suggest that as they are admitted by stipulation they be read.

Mr. Goldstein: I am going to read them.

(The letters referred to were marked Defendants' Exhibit F in evidence.)

Mr. Goldstein: The letter from Wentz & Erlin reads as follows:

“October 30th, 1936.

“Mr. R. F. Urquhart,

“Bank of America Building,

“Sacramento, California.

“Dear Sir:

“Re: Policy AG-23442—L. K. Fereva d/b/a

“R. & S. Garage—11/24/36

“The above captioned policy was written last year for the account of L. K. Fereva, and will expire on November 24th.

“As Mr. Fereva has not been licensed for the

(Testimony of Walter B. Wentz.)

coming year, will you please advise what disposition is to be made of this risk. [108]

“Yours very truly,

“WENTZ & ERLIN,

“General Agents,

“By: -----

“Office Manager.”

And on the left-hand side, “GFK:KB.”

Q. “GFK” means George F. Keil?

A. Yes.

Mr. Goldstein: Now, here is the reply: At the top it reads, “Wents & Erlin, Insurance, General Agents.” On the left-hand side, “R. F. Urquhart, District Representative, 511 Capital National Bank Building, Sacramento, Calif.” On the right-hand side, “San Francisco, 206 Sansome Street, Exbrook 2064.”

“Sacramento, Calif., Oct. 31, 1936.

“George Keil,

“c/o Wentz & Erlin,

“206 Sansome St.,

“San Francisco, Calif.

“Re: L. K. Fereva License

“and Pol. #AG-23442.

“Dear Sir:

“Instructions for the renewal of the above policy will be forwarded to you before the expiration date. I appreciate your calling the fact to my attention however.

“Regarding Fereva not having been licensed this

(Testimony of Walter B. Wentz.)

year, your wrong on that. You wrote me about that several weeks ago and a few days after your letter was received I was in Lincoln and took up the subject with Mr. Fereva. The new license happened to have arrived in the mail the day before, but the envelope had not been opened, so I stood there while this was done. I saw the license myself and jotted down its number and sent it in [109] to you that same day. I believe Mr. Gordon was up here on that day.

“Any way Fereva has been licensed and if the State records do not show it or you cannot locate the information I have mentioned let me know and I’ll get it again.

“Very truly yours

“R. F. URQUHART.” [110]

Mr. Goldstein: I offer in evidence a letter in connection with Mr. Fereva, addressed to Mr. Urquhart by Wentz & Erlin, and his reply thereto.

Mr. Scott: The letter is dated January 6, 1937, and I object to it upon the ground it is too remote, that it is not admissible even for the purpose of proving what counsel desires. It is merely a communication addressed to Mr. Urquhart—it is brief; I will show it to your Honor (handing document to the Court). I object to it as incompetent, irrelevant and immaterial.

The Court: The Court will admit it with the understanding you connect it up.

(The lettter referred to was marked Defendants’ Exhibit G in evidence.)

(Testimony of Walter B. Wentz.)

Mr. Scott: The next letter, if your Honor pleases, is even a year later, November 5, 1936, and deals simply with a request [112] for renewal of the Fereva policy. We object to it as incompetent, irrelevant and immaterial.

The Court: Mr. Goldstein, in his remarks connected with the letter, has indicated he will connect it up.

Mr. Goldstein: Yes; absolutely. I can't do everything at one time.

The Court: It will be admitted with that understanding.

(The letter referred to was marked Defendants' Exhibit H in evidence.)

Wentz & Erlin

Insurance

General Agents

R. F. Urquhart

District Representative

511 Capital National Bank Bldg.

Sacramento, Calif.

San Francisco

206 Sansome Street

EXbrook 2064

Sacramento, Calif., Nov. 5, 1936

Wentz and Erlin,

206 Sansome St.

San Francisco, Calif.

Re; AG-23442 L. K. Fereva d/b/a/

Fereva Chevrolet Co.

Gentlemen:

The above policy is to be renewed upon expira-

(Testimony of Walter B. Wentz.)

tion, provided you still consider L. K. Fereva an agent. Otherwise please notify me of the fact and do not renew the coverage.

If you do renew increase the limits of Liability to 10/40,000.00. P. L. Leave off the "Additional Assured" blanket endorsement and add Mrs. Bessie K. Fereva as an additional assured. The policy is to be sent to me for delivery and financing of the premium.

Very truly yours

R. F. URQUHART

Received Nov 6 - 1936 Wentz & Erlin General Agents.

[Endorsed]: Filed July 30, 1943. Paul P. O'Brien, Clerk.

Mr. Goldstein: Then there is a copy of a letter addressed—they are all in order. These are from 1937, 1938, and 1939, down to this policy.

Mr. Scott: If your Honor pleases, to save time, may I register to each and every of those letters, each independent to the other, the objection that they, and all of them, are incompetent, irrelevant and immaterial; that they in no degree or manner whatever tend to prove any issue of agency in the case, other than supporting the facts as they now appear, namely, that Urquhart was a solicitor and was engaged in securing the policy of Fereva, and in seeing that Fereva's policy was renewed from

(Testimony of Walter B. Wentz.)

time to time, so I can't see that any one of them is either relevant, material, or competent.

Mr. Goldstein: If the Court pleases, I take issue with that statement, and it is a matter for the jury to determine what effect and valuation should be given to this policy and the facts stated within it, and the correspondence between Wentz & Erlin and its district representative. I say it is competent, and in order to save time I will offer these all as one exhibit.

The Court: The objection is overruled with the understanding that you will connect them up. [113]

(The correspondence and duplicate insurance policy referred to were marked Defendants' Exhibit I in evidence.)

Mr. Goldstein: I will read Defendants' Exhibit G, which is on the letterhead of General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland; Wentz & Erlin, General Agents, Insurance Center Building, 206 Sansome Street, San Francisco, Cal.:

“January 6th, 1937

“Mr. R. F. Urquhart,
“Bank of America Building,
“Sacramento, California.

“Dear Sir:

Re: Policy AG-990976—

“L. K. Fereva

“We are enclosing herewith Garage Form No. A-1635, which please have completed and signed by

(Testimony of Walter B. Wentz.)

the above captioned Assured, returning same to this office at your early convenience.

“Yours very truly,

“WENTZ & ERLIN,

General Agents,

“By: W B WENTZ”

Q. That is your signature, is it not, Mr. Wentz?

A. Yes, sir.

Q. Then this was returned to you by Mr. Urquhart with a notation in red typewriting:

“Sorry these were overlooked, Grownays will be received in few days.”

Signed, “R. F. URQUHART.”

You recall this communication? It is marked, “Received January 11, 1937, Wentz & Erlin, General Agents.”

Letter dated November 5, 1936. At the top “Wentz & Erlin, [114] Insurance, General Agents.” On the left-hand side, “R. F. Urquhart, District Representative, 511 Capital National Bank Building, Sacramento, Calif.” On the right-hand side, “San Francisco, 206 Sansome Street, Exbrook 2064.”

“Sacramento, Calif.. Nov. 5, 1936

“Wentz and Erlin,

“206 Sansome St.,

“San Francisco, Calif.

“Re; AG-23442 L. F. Fereva d/b/a

“Fereva Chevrolet Co.

“Gentlemen:

“The above policy is to be renewed upon expira-

(Testimony of Walter B. Wentz.)

tion, provided you still consider L. K. Fereva an agent. Otherwise please notify me of the fact and do not renew the coverage.

“If you do renew increase the limits of Liability to 10/40,000.00 P.L. Leave off the ‘Additional Assured’ blanket endorsement and add Mrs. Bessie K. Fereva as an additional assured. The policy is to be sent to me for delivery and financing of the premium.

“Very truly yours,

“R. F. URQUHART”

May I have Exhibit I?

I am now reading, members of the jury Exhibit I——

Mr. Scott: May I make a suggestion, your Honor? Exhibit I, I understand, is admitted subject to being connected up—in what manner I don’t know. Should it be read now?

Mr. Goldstein: I understood, your Honor, I was to connect it up later on, but I am offering this evidence and correspondence to show the orders that were given Mr. Urquhart by Wentz & Erlin, [115] and what they told him.

Mr. Scott: Everybody stipulates that what Mr. Urquhart was there for was for the purpose of getting agents and getting business.

Mr. Goldstein: If the Court pleases, I didn’t take that stipulation. I am going to prove that they held him out as their agent and gave him the power to waive the clause in Condition 12 and

(Testimony of Walter B. Wentz.)

Condition 7, or any other condition supplemental to the policy. Your Honor has in mind what I have reference to, that an agent—even an ostensible agent—has a right to waive a condition precedent to liability and recovery. That has been held in the Holmes-Anderson case down to the present time, and has been reiterated many, many times, and I will refer your Honor to a case that is the law of this State: that is the Bank of Seattle against Minnesota Fire Insurance Company, decided by——

The Court: Proceed.

Mr. Goldstein: Beg your pardon?

The Court: Proceed.

Mr. Goldstein: (reading):

October 26th, 1937

“Mr. L. K. Fereva,

“Lincoln,

“California.

“Re: Policy AG-220976—L. K. Fereva doing
business as R. & S. Garage—11/24/37

“Dear Sir:

“Captioned above is November expiration for your Account. Will you kindly advise if we may renew the same.

“Thanking you, we remain [116]

“Yours very truly.

“WENTZ & ERLIN,

General Agents,

“By:” ——

line for “Office Manager”, and the initials “GFK”
—that is George F. Keil, is it not?

(Testimony of Walter B. Wentz.)

The Witness: Yes.

Mr. Goldstein: And on the bottom, "C, C, to R. F. Urquhart."

Now here we have a letter from Mr. R. F. Urquhart, dated December 16, 1937. In this letter I call the jury's attention to the fact there is on the letter, "Wentz & Erlin, Insurance, General Agents. Los Angeles, 416 W. Eighth Street," and "San Francisco, 206 Sansome Street," and "R. F. Urquhart, Sacramento District Office, Ochsner Building, 719 K Street, Sacramento, Calif." addressed to:

"Wentz and Erlin

"206 Sansome St.

"San Francisco, Calif.

"Att. George Keil

"Re: AG-990976 L. K. Fereva.

"Gentlemen:

"The assured overlooked sending in instructions to renew this policy, so will you please have the new policy go forward as quickly as possible. I would like to see the policy dated back to Nov. 24, so there would be no gap in the coverage. This you are safe in doing as there have been no losses.

"Very truly yours

"R. F. URQUHART"

An inter-communication document from Mr. Urquhart to George F. Keil, dated December 18, 1937. It is on the stationery of [117] Kansas City Fire & Marine Insurance Co., "Inter-Office Cor-

(Testimony of Walter B. Wentz.)

respondence. From R. F. Urquhart. To George Keil. Date 12/18/37.

“Subject: AG-991200 L. K. Fereva

“I have just received the above which is a renewal and I note is written at the same premium as last year, however the audit on last years policy showed that the total payroll was under \$5000.00 and as there is no chance of its being increased this year, I am wondering if it is not in order to charge the minimum premium this year. Mr. Hubbard has the audit report for last year.”

This was received in the office of Wentz & Erlin, December 20, 1937.

I now read a letter dated December 23, 1937, written to:

“Mr. R. F. Urquhart,
“Ochsner Building,
“Sacramento, California.

“Dear Sir: Re: Policy AG-991200
 “L. K. Fereva

“If you will refer to your Manual you will see that the Minimum Premium for a Garage Liability policy in Lincoln is \$88.00 for \$5/10,000 Limits and if you will add 19% to this amount to equal \$10/40,000 Limits you will find that the Liability Premium will figure \$104.72. The Property Damage Minimum in Territory 8 for a Garage Liability Policy is \$25.00. This is exactly what we have charged on the above captioned policy plus the

(Testimony of Walter B. Wentz.)

additional charge for the inclusion of Bessie K. Fereva. Furthermore, the premium is very clearly marked on the policy 'Minimum Premium'.

"Also, if you will refer to last year's policy you [118] will notice that the premium charges were exactly the same, 'Minimum Premium'.

"Yours very truly,

"WENTZ & ERLIN,

General Agents,

"By:

"Office Manager

"GFK"——

again, Mr. George F. Keil.

And an inter-communication document from Mr. Urquhart, dated December 31, 1937. This is Policy A. G. 991200, L. K. Fereva:

"Please issue endorsement correcting the name of the above assured to read L. K. Fereva D.B.A. Fereva Chevrolet Co. instead of as written, please rush through."

Then, "Received January 3, 1938, Wentz & Erlin, General Agents."

A letter dated December 19, 1938, addressed to:

"Mr. L. K. Fereva,

"Lincoln,

"California"——

by Wentz & Erlin——

"Re: Policy AG-991200

"R. & S. Garage

(Testimony of Walter B. Wentz.)

“On November 25th we wrote you a follow-up of original expiration notice advising that your Garage policy would expire on December 16th.

“As we have received no order to renew presume the same is not desired and it has been marked ‘Expired’ and filed accordingly.

“Yours very truly,

“WENTZ & ERLIN,

General Agents, [119]

“By:” —

GFK, Office Manager, “Copy to R. F. Urquhart.”

The Court: Mr. Goldstein, may I suggest that you have a little pity on the reporter and read it a little more slowly?

Mr. Goldstein: I was just trying to save time. I shall. I am sorry Mr. Wight. I will go more slowly.

On November 25, 1938, I have a letter addressed to Mr. Fereva by Wentz & Erlin:

“Mr. L. K. Fereva,

“Lincoln,

“California.

“Re:

“Policy AG-991200—L. K. Fereva doing

“business as R. & S. Garage—“12/16/38

“Dear Sir:

“Captioned above is December expiration for

(Testimony of Walter B. Wentz.)

your Account. Will you kindly advise if we may renew the same.

“Thanking you, we remain

“Yours very truly,

“WENTZ & ERLIN,

General Agents,

“By:” —

George F. Keil, Office Manager, Carbon copy to R. F. Urquhart.

Under date of December 21, 1938, an inter-communication document written by Mr. R. F. Urquhart on the stationery of Potomac Insurance Company, dated “12/21/38”:

“From R. F. Urquhart

“To R. Garsen

“Subject: A. G. 991200—L. K. Fereva DBA Fereva Chevrolet [120] Co.

“Please have the above renewed as of this date, its my boot that renewal wasn’t order”

Did I read that correctly, Mr. Scott?

“Please have the above renewed as of this date, its my boot that renewal wasn’t order”

Mr. Scott: Yes. He was in a hurry.

Mr. Goldstein: “Received, December 23, 1938, Wentz & Erlin, General Agents.”

Q. I show you, Mr. Wentz, a policy dated December 16, 1938, AG 991200, and ask you if that is the policy referred to in this inter-communication by Mr. Urquhart?

A. I don’t see the inter-communication.

(Testimony of Walter B. Wentz.)

Q. Well, here it is, right here (exhibiting document to witness).

A. It seems to be the number, but it seems to be R. & S. Garage. I don't know what that is.

Q. Well, inside you will find it reads: "L. K. Fereva, doing business"—the policy itself is made out to L. K. Fereva, doing business as R. & S. Garage; the number of this policy is AG 991200.

A. Yes, sir.

Q. And this communication I have just read is with reference to the same policy?

A. That is the same number.

Mr. Goldstein: Now I desire to offer in evidence the indemnity policy of insurance which was issued by the plaintiff corporation to L. K. Fereva under date of December 16, 1938, and which is referred to in this letter of December 21, 1938.

Mr. Scott: To which we make the same objection that we made heretofore, namely, that no proper foundation has been laid to show any authority on the part of Mr. Urquhart to attach the endorsement, which is obviously what counsel wishes to get in, and [121] which is on the face of the policy. No foundation thus far has been laid for that, and as to the policy itself, that is another matter, but as to the endorsement, there is no evidence whatever that would justify the introduction of that endorsement in evidence at the present time. Counsel started in in my case on cross examination to have this same policy admitted. He was going to lay a foundation by calling Mr. Wentz. He has

(Testimony of Walter B. Wentz.)

called Mr. Wentz both in my case and his, and so far there has been no authorization of authority shown in Mr. Urquhart to place any endorsement thereon.

Mr. Goldstein: I am not offering it for that purpose.

Mr. Scott: I have no objection to it, provided that be excluded.

Mr. Goldstein: Well, what exclusion? There isn't any endorsement on it.

Mr. Scott: I mean that label.

Mr. Goldstein: Oh, this label? I will connect that up. I will withdraw the offer and we will put this to sleep for a minute.

A letter dated December 1, 1939, from Wentz & Erlin to Mr. L. K. Fereva, Lincoln, California:

"Re: AG991262—L. K. Fereva D.B.A.

"Fereva Chevrolet Co. 12/16/39

"Dear Sir:

"Captioned above is December expiration for your Account. Will you kindly advise if we may renew the same.

"Thanking you, we remain

"Yours very truly,

"WENTZ & ERLIN,

General Agents,

"By:" — [122]

GFK, Office Manager.

Here is a letter dated December 5, 1939, an inter-communication dated December 5, 1939, by

(Testimony of Walter B. Wentz.)

Mr. R. F. Urquhart, at Sacramento, to the home office, George Keil, dated December 5, 1939:

“In Re A.G. 991262—L. K. Fereva.

“In answer to yours of the 4th do not show Bessie K. Fereva as an additional assured on this years renewal. “I’m sorry I overlooked this point and thanks for bringing it up.”

This is marked “Received, December 6, 1939, Wentz & Erlin, General Agents.”

And another inter-communication, dated December 2, 1939, in connection with this—I will just read it—pardon me:

“Received, December 4, 1939, Wentz & Erlin, General Agents.

“From R. F. Urquhart at Sacramento

“To Home Office, George Keil. Date 12/2/39

“In Re the attached notice of expiration for Fereva. Please renew this with the following changes:

“Estimated Total Payroll \$5,000.00

“(audits show 2600.00)

“Limits of Liability—P.L. 7500/30000—P.D. 5000

“Limited Form D.O.C.—Bessie K. Fereve

“ ” ” ” —L. K. Fereva.

“Have policy, etc., mailed to me for delivery as I believe premium will be financed.”

. Mr. Wentz, I am not an insurance man. I direct attention to those letters, “D.O.C.” I know what it means, but will you tell the jury what is meant by “D.O.C.”? A. D.O.C.?

(Testimony of Walter B. Wentz.)

Q. Yes; "D.O.C."

A. I don't know. Where do they occur?

Q. Here (exhibiting document to witness).

A. That would [123] mean "Drive Other Cars."

Q. That is right. In other words, it authorized an endorsement to be put on there that Mrs. Fereva could drive the car and the liability would remain?

A. No; that she could drive cars that did not belong to her, or in her family.

Q. And the same for Mr. Fereva?

A. The same for Mr. Fereva.

Q. And when he said in here, "Limits of Liability," as he said in his statement, "P.L. 7500," and the other 30,000—here is the policy that he told you to execute, and it was executed, and the one in question, isn't it? On December 6, 1939, that policy was executed in accordance with this inter-communication from Mr. Urquhart to your office, isn't that right? I am just showing you a copy. The original, I think, is in the Judge's chambers.

Mr. Scott: Pardon me, are you using the office daily?

Mr. Goldstein: No; the copy appended to the complaint.

The Witness: This is a copy made out on a sample policy.

Mr. Scott: This is attached to our complaint?

Mr. Goldstein: That is attached to your complaint.

(Testimony of Walter B. Wentz.)

Q. Now, my question, Mr. Wentz, is this: I read to you an inter-communication dated December 2, 1939, in which Mr. Urquhart made these statements, that that policy was to be Limits of Liability, Public Liability 7500 for one person, 30000 for one accident; Property Damage is \$5,000. Limited Form of D.O.C.—that is, driving other cars—for Bessie Fereva, and limited form, D.O.C., for L. K. Fereva—isn't that the result of this order from Mr. Urquhart?

Mr. Scott: Just a moment——

A. It would seem to be.

Mr. Goldstein: Well, he answered the question.

Mr. Scott: My objection simply is that the——

[124]

Mr. Goldstein: I will withdraw the question.

Mr. Scott: My objections are not captious, Mr. Goldstein.

Mr. Goldstein: I beg your pardon. I withdraw the question and put it this way:

Q. Wasn't that policy issued by your company on this inter-communication and sent to Mr. Urquhart for delivery to Mr. Fereva?

A. Well, he had personally nothing to do with it, but I would judge from the correspondence that that is exactly what happened, yes.

Q. So that Plaintiff's Exhibit No. 1, the policy in question, reads exactly as this communication to your office, which I read to the jury, and limits the liability for one person to 7500——

(Testimony of Walter B. Wentz.)

Mr. Scott: I submit the two documents speak for themselves.

The Court: Yes.

Mr. Goldstein: Very well. Withdraw that. May I finish with this letter here?

Q. Now, I have a letter dated December 4, 1939, sent by your office to Mr. Urquhart:

“December 4th, 1939

“Mr. R. F. Urquhart,
“Ochsner Building,
“Sacramento, California.

“Dear Sir:

“Re: L. K. Fereva d, b. a. Fereva Chevrolet
Co.—AG-991262

“We have your order for renewal of the above captioned policy on an estimated payroll basis of \$5,000, and amending the limits of Liability to 7500/30,000 instead of \$10,000/40,000 as previously written. This will be satisfactory.

“You ask for Limited Form Drive Other Car coverage [125] for Bessie K. Fereva and L. K. Fereva, which is O. K.

“Last year the policy contained an endorsement naming Bessie K. Fereva as an additional insured as to any and all automobiles owned by or in charge of L. K. Fereva. Do you wish this coverage on the policy this year?

“You realize of course that the Drive Other Car

(Testimony of Walter B. Wentz.)

coverage does not include any cars owned by or in charge of L. K. Fereva.

“Yours very truly,

“WENTZ & ERLIN,

General Agents,

“By:” —

George F. Keil, Office Manager.

In this letter I read, the inter-communication dated December 5, from Mr. Urquhart to your office, was in answer, was it not, to the letter from your office by Mr. Keil dated December 4, to Mr. Urquhart?

A. I can't answer that. I don't know. It speaks for itself.

Mr. Goldstein: Well, in order to have this clear—it will take just a moment—I will have to read this letter out of turn. It is a communication on the letterhead of Potomac Insurance Company, marked “Received December 6, 1939, Wentz & Erlin, General Agents,”

“From R. F. Urquhart At Sacramento

“To Home Office George Keil Date 12/5/39

“In Re A. G. 991262—L. K. Fereva.

“In answer to yours of the 4th, do not show Bessie K. Fereva as an additional assured on this years renewal. I'm sorry I overlooked this point and thanks for bringing it up.” [126]

Q. That was the answer, was it not, to your letter of December 4th?

(Testimony of Walter B. Wentz.)

A. It would appear so from the correspondence.

Q. Attached to this letter in your files was a duplicate copy of the issuance of that policy in the General Accident to Mr. L. K. Fereva, as is shown here, together with the endorsements recommended by Mr. Urquhart (exhibiting document to witness)?

A. That is our copy.

Mr. Goldstein: Now, in order to complete this entire matter on this policy dated December 16, 1939, —

Q. Mr. Wentz, I show you your own records. On December 16, 1939, this policy, Plaintiff's Exhibit No. 1, AG 1556—I believe that is the correct number. Yes, 1556, as shown here, the premium charged was \$128.42. When was that premium paid, according to your records here? If I show you this account can you tell the jury, Mr. Wentz? I also give you the last sheet for 1940 (handing documents to the witness).

A. This is this policy dated December 16th?

Q. Yes, sir. A. You pointed out?

Q. Yes.

A. It would appear to have been paid on March 16th.

Q. On March 16th? A. 1940.

Q. In other words, it was paid sometime after this accident took place on February 25, 1940, wasn't it?

A. It was paid on March 16, 1940.

Q. Now, there is a notation here, "March 16, 1940, \$128.42," and then carried out, "\$128.42."

(Testimony of Walter B. Wentz.)

That would indicate that the payment was made on that date and there were policies issued by you subsequent to that time, were they not, to Mr. Fereva?

Mr. Scott: We object to that as incompetent, irrelevant and immaterial.

The Court: What is the materiality of that.

[127]

Mr. Goldstein: Your Honor, I simply want to show that he kept on acting as an agent after this accident, and the policy remained in full force and effect, and I desire to call the Court's attention to the fact that the plaintiffs have so alleged, that that policy was in effect from December 16, 1939, to December 16, 1940.

The Court: Well, that is an admission.

Mr. Goldstein: That is an admission, but I want to show that they issued policies——

Mr. Scott: The point is this: The fact that we continued to do business with a man has no relevancy whatever, and that is what I am objecting to.

Mr. Goldstein: Your Honor, the fact that the premium was paid subsequent to the accident, and a period of time over 20 days after the accident will be material.

Mr. Scott: We made no issue the premium was not paid. The only question is, when he paid it, why in the world didn't he tell us there was an accident? We wouldn't be here if he had.

Mr. Goldstein: Mr. Scott is arguing the case——

Mr. Scott: I am objecting to the pending ques-

(Testimony of Walter B. Wentz.)

tion as being incompetent, irrelevant and immaterial.

Mr. Goldstein: I will withdraw the question. Of course, it remains in the record as to when the premium was paid, I take it, your Honor.

Mr. Scott: I don't see why it should be out of the record.

Mr. Goldstein: I have no further questions from Mr. Wentz. Thank you.

The Witness: Am I excused?

Mr. Scott: No, just a moment, Mr. Wentz.

Mr. Goldstein: If your Honor please, there is just one letter [128] I overlooked—it is a copy—it is a copy of a letter I offered in evidence, and I don't want to keep it here (handing document to Mr. Scott).

Cross Examination

By Mr. Scott:

Q. Mr. Wentz, referring to the file that you produced and from which counsel has just been reading, that is a file that has been preserved, having to do with the issuance of the policy in suit and the preceding policies to Mr. Fereva, is it not?

A. Yes, sir.

Q. These letters received from Mr. Urquhart which have just been read by counsel, Exhibits G and I, are letters asking—no, sent requesting the issuance of policies, and stating the desired coverages, is that correct?

A. Stating the what?

Q. Desired coverages?

A. Yes.

(Testimony of Walter B. Wentz.)

Q. Now, the replies thereto, sent from your office, calling your attention particularly to those sent over the signature of George Keil, had to do with the acceptance, rejection, or change in the terms of the policy applied for, is that correct?

A. Yes.

Q. Mr. George Keil is also an employe of the copartnership Wentz & Erlin, is he not?

A. Yes.

Q. And has his office at the main office of Wentz & Erlin is he not? A. Yes.

Q. And has his office at the main office of Wentz & Erlin on Sansome Street in San Francisco?

A. Yes, sir.

Mr. Scott: That is all for the present, if your Honor pleases.

Mr. Goldstein: I desire to call Mr. Urquhart under Section 2055 of the Code of Civil Procedure, the same as if he was under cross examination, your Honor.

Mr. Scott: May I make this inquiry, if your Honor please? Mr. Urquhart is quite deaf, and I can foresee—well, I don't know—sort of breakers ahead, and as we are very near the time [129] of adjournment this afternoon, and have to make a decision as to when we should get together again, may I suggest that it might be advisable to dispose of that before putting Mr. Urquhart on the stand? We are going to otherwise have a witness who is not going to hear very well, and——

The Court: Ladies and gentlemen of the jury,

it has come to the attention of the Court that some of the jurors prefer, when we adjourn this afternoon, to adjourn until Friday morning. Now, will those who are in favor of that raise their hands? It looks like it is unanimous. So it will be the order of the Court that when we adjourn tonight we adjourn until Friday morning.

Ladies and gentlemen of the jury, we will now adjourn until Friday morning, and before doing so the Court asks you to remember the admonition heretofore given you with regard to discussing the case among yourselves, or with any other person or persons. You are now excused until Friday morning at ten o'clock. I wish you all a Merry Christmas.

Mr. Scott: May I ask your Honor for an order directing the witness to return?

The Court: Yes. All witnesses, either for the plaintiff or the defendants, are ordered to appear before this court on Friday morning at ten o'clock without further order from the Court. You may now retire.

(Thereupon an adjournment was taken until Friday, December 26, 1941, at 10:00 o'clock a. m.) [130]

Friday, December 26, 1941—

10:00 O'Clock A. M.

Mr. Goldstein: If the Court please, I think at the adjournment last Tuesday I called Mr. Urqu-

hart under Section 2055 to be examined the same as if he was under cross examination, as provided by the state.

Mr. Scott: May it please your Honor, may I object and point out that Mr. Urquhart is not an officer, agent, or representative of the General Accident, the plaintiff. so he cannot be called under 2055, but has to be called as an ordinary witness. The evidence shows he is an employee of Wentz Erlin.

Mr. Goldstein: I believe, your Honor, that the evidence shows thus far that he is the direct representative of the general agents of the company.

Mr. Scott: That may be, but my office boy is not a member of my firm.

Mr. Goldstein: I think, Mr. Scott, that you are not aware of the fact that that section has been amended to include a man in Mr. Urquhart's classification——

Mr. Scott: Mr. Urquhart isn't even an employee of the General.

(Argument.)

The Court: The objection is overruled. [131]

R. F. URQUHART,

called for the Defendants under Section 2055
C.C.P.; Sworn.

Direct Examination

By Mr. Goldstein:

Q. I guess I will have to come close to you, Mr. Urquhart. I have never spoken to you before. Can you hear me now?

A. Well, slightly; you better come closer.

Q. I shall come closer. You reside here in Sacramento? A. Yes, sir.

Q. How long have you resided here, Mr. Urquhart? A. More or less for 60 years.

Q. Do you know the City quite well?

A. Fairly well.

Q. What is your business or occupation?

A. Insurance; as representatives of Wentz & Erlin.

Q. How long have you been engaged in the insurance business?

A. In the insurance business?

Q. Yes, sir. A. Fifteen years.

Q. How long have you been a representative of Wentz & Erlin?

A. I think I went to work with them the latter part of 1933 or 1934.

Q. Prior to that time, Mr. Urquhart, were you engaged in the insurance business here in Sacramento? A. That is right.

Q. Now, calling your attention to one L. K.

(Testimony of R. F. Urquhart.)

Fereva, the gentleman sitting back there, how long have you known him? A. About 14 years.

Q. And have you known him during that time for insurance business? A. Yes, sir .

Q. Am I to understand, Mr. Urquhart, that you were doing business with him in the insurance line prior to the time that you went with Wentz & Erlin, is that correct? A. Yes.

Q. Have you any means at all of advising the jury just about when [132] you did become connected with Wentz & Erlin?

A. The only definite part that I can say on that is that it was either in 1933 or 1934.

Q. In 1934. I will commence with that year. You stated that you were then employed by Wentz & Erlin; and were you their representative here in Sacramento? A. As an employee, yes.

Q. In what capacity?

A. In the common sense of words, my work is described as special agent.

Q. And as the special agent for Wentz & Erlin what territory did you cover, Mr. Urquhart?

A. Practically the Sacramento Valley.

Q. For the sake of the record, what would that include? Sacramento north to the Oregon line?

A. I would describe it from the center of the Sierra Nevadas to the center of the Coast Range, north as far as Dunsmuir.

Q. How far south of Sacramento?

A. Don't go below Sacramento.

Q. Just including the City and County of Sac-

(Testimony of R. F. Urquhart.)

ramento. Now then, in 1934, when you were employed by Wentz & Erlin, did you represent them as far as all their companies were concerned?

A. Well, I presume so.

Q. Among others, did you represent the General Accident Fire and Life Assurance Corporation, Ltd.?

A. No.

Q. Did you make any agreements, or did you obtain Mr. Fereva as an agent for the company?

A. I recommended him to be appointed as an agent for the company, with Wentz & Erlin.

Q. For this particular company?

A. Yes.

Q. You made the arrangement regarding that, did you not, with Mr. Fereva?

A. As a recommendation to Wentz & Erlin's office, yes.

Q. And you had the conversation with Mr. Fereva when he put in his [133] application for an appointment, did you not?

A. As I recall, he did.

Q. As a matter of fact, Mr. Urquhart, you were the one who gave him any instructions regarding policies to be made, or any insurance to be placed in that company, isn't that true?

A. No, I can't say that I said that definitely.

Q. Well, when you recommended him for an agent's license he was appointed, was he not?

A. He was a licensed agent previous.

Q. He was a licensed agent previous, for some other company?

A. Yes.

Q. What company?

(Testimony of R. F. Urquhart.)

A. I think he was an agent for the West American, the Continental Casualty, I believe.

Q. Just a minute, Mr. Urquhart. Both of those companies wrote public liability insurance, didn't they?

A. The West American and the Continental Casualty?

Q. Yes. A. Yes, I think they did.

Q. In other words, they were automobile contracts that they wrote for property damage, collision insurance and public liability?

A. They were licensed for that, yes, sir.

Q. That is what I have reference to. Then after he gave up those companies you recommended this General Accident, is that correct?

A. Only in an attempt to get his business, I guess.

Q. All right. Well, I will just start in with July 1, 1937. You remember, of course, that he had a license for that year, from 1937 to 1938?

A. A license?

Q. Yes, a license from 1937 to 1938.

A. Couldn't have done business with him unless he did.

Q. Well, at least you made him a representative in 1934, if he received the license, as far as you know, to act as an agent for this company?

A. As far as I know. [134]

Q. And you were the one who conversed with him and talked about policies and insurance with this company?

(Testimony of R. F. Urquhart.)

A. Whenever I had the opportunity.

Q. How often, can you tell the jury, Mr. Urquhart, did you see Mr. Fereva, let us say from the year 1934 up to and including the 1st of May, 1940?

A. How often I saw him?

Q. Yes.

A. Well, I tried to make it a habit to see our agents once a month. That doesn't always happen.

Q. Could you have seen him as much as twice a month?

A. At times, yes.

Q. On those occasions when you saw him, what was the type of your conversation with him?

A. Various; a lot of intimate, a lot personal, a lot about insurance, a lot about the automobile business.

Q. On those occasions you did discuss the matter of insurance and placing the contracts with this company for automobile contracts?

A. Only by asking for more business.

Q. Do you know any other company except the General Accident Fire and Life Assurance Corporation in which you wrote any of his insurance on and after the date you went with Wentz and Erlin in 1934?

A. Previous to that?

Q. No; after that.

A. I think Mr. Fereva wrote the Garfield Agency in Auburn—

Q. As a matter of fact, is it not true that all of his automobile contracts and insurance for public liability was placed in this company, the General Accident Fire and Life Assurance Corporation?

(Testimony of R. F. Urquhart.)

A. No, sir, it was not.

Q. Was most of it placed there?

A. No, very little of it.

Q. You say very little of it. Now, did you give him any instructions as to how to write this insurance, or place the insurance? [135]

A. On the automobiles?

Q. Yes. Isn't it a fact, Mr. Urquhart, you did give him instructions as to how he was to insure automobiles, and what program he was to follow to get policies?

A. No, sir.

Q. You did not? Did you ever do that at all with Mr. Fereva?

A. No.

Q. By the way, did you participate in helping Mr. Fereva in some of these contracts of insurance?

A. On sales of new automobiles?

A. No; on writing insurance or getting policies.

A. You mean go out and help him?

Q. Yes.

A. No.

Q. This is 1934. I want to show you these two papers (exhibiting documents to witness). Look at that and see if you can recognize anything on there, or if you know what it is.

A. That is an application for his own personal garage liability.

Q. In whose handwriting is it?

A. How is that?

Q. In whose handwriting is it?

A. That is mine.

Q. That is what I want to find out. You recognize that, do you not?

(Testimony of R. F. Urquhart.)

A. That is not for the sale of automobiles.

A. Pardon me. I don't want to get you confused, Mr. Urquhart. I didn't ask you anything about the sale of automobiles; I asked you if you assisted him in obtaining insurance, or getting policies of insurance. Did you understand that?

A. I didn't get the question that way.

Q. I fully appreciate you might misunderstand me. I don't want to confuse you, Mr. Urquhart. This is in your handwriting? A. Absolutely.

Q. And there are changes on here for a certain policy—this is for the year 1934—11-12-34. The previous policy was twenty-five [136] and fifty thousand, and you changed it to ten and twenty thousand, is that right?

A. That is right. Those are my initials.

Mr. Goldstein: I want to offer in evidence now the application which the witness has identified as his own handwriting, dated Lincoln, Placer County, 11-12-34, and, your Honor, also the policy—a copy of the policy issued by Wentz & Erlin on that application prepared by the witness, and ask to have it marked Dickinson's Exhibit next in order.

Mr. Scott: Might I register the objection that this is five years prior to the policy in question; that it is incompetent, irrelevant and immaterial, and far too remote to shed any light on this transaction.

The Court: I think the objection is good, Mr. Goldstein.

(Testimony of R. F. Urquhart.)

Mr. Goldstein: If your Honor please, 1934 to 1939 would not be too remote to show the authority of the agent whom we are trying to connect with the question of notice. We can go back as far as ten years. This is very pertinent, your Honor, because it is in the handwriting of the witness, to show that he not only got this man as an agent, but he assisted him in getting his insurance, and to show how for he went.

Mr. Scott: You Honor, this is a policy on Mr. Fereva's own car, a dealer's policy issued in 1934. There is in evidence the policy issued in 1939. We have also furnished to Mr. Goldstein, and there is, as I recall it, in evidence, the correspondence between Mr. Urquhart and Wentz & Erlin covering the issuance of the policy in 1939. That is right in the record, I believe. Now then, all the rest of this, I submit, is too remote and cluttering up the record.

Mr. Goldstein: This is the only one I have where the application is prepared by Mr. Urquhart as a direct agent of Wentz & [137] Erlin.

Mr. Scott: Now, I may be in error, but we have in evidence here numerous requests—just for example this one to Urquhart in 1935, which is of younger vintage than that, and 1936—here is 1936, here is 1937, and am I right in saying this is 1939?

Mr. Goldstein: That is 1939, yes.

Mr. Scott: Here is 1939, dealing with the issuance of the very policy which covered this ac-

(Testimony of R. F. Urquhart.)

cident. Now, why go back to the year 1, or the year 1934?

Mr. Goldstein: May I point out there are certain things on here—Mr. Urquhart even went so far as to fix the premium and change the premium on the change he recommended for the next policy. I think it is important to show that he corrects the coverage from twenty-five and fifty to ten and twenty, and those are his own figures, and he fixes the premium, even. Now, I want to show his action and conduct on that part, in line with his duties as a special agent.

Mr. Scott: If you Honor pleases, this Court can take notice of the fact that the matter of fixing the premiums is simply a matter of mathematical calculation. Under the law, the rates must be filed with the Insurance Commissioner before any policy can be issued at all, and from then on, whether a man wants a ten thousand coverage, five thousand coverage, or fifty thousand coverage, it is purely a matter of mathematics. This man has no more right to fix a rate than I have.

The Court: How does it bear on the proposition of being a managing agent?

Mr. Goldstein: It bears on the proposition of his ostensible authority, your Honor, his ostensible agency.

The Court: They don't deny that. [138]

Mr. Goldstein: They do deny it.

The Court: Ostensible authority?

(Testimony of R. F. Urquhart.)

Mr. Goldstein: Absolutely. That is the position of Mr. Scott.

The Court: Is that your position, Mr. Scott?

Mr. Scott: Our position, your Honor, is that the evidence shows that this gentleman is an agent of Wentz & Erlin in this territory for the purpose of getting business, and we have shown how he got it, and how he got this particular policy from Mr. Fereva. Now, what can be more direct than that?

Mr. Goldstein: Our position is this man was more than an employee; he went out and assisted these agents, and he held himself out as a direct representative of Wentz & Erlin, and Wentz & Erlin permitted him to be held out as a direct representative of Wentz & Erlin, and when notices were sent to him of accidents, he took them, and the company acted on them. We have to prove that to prove ostensible authority. The position of Mr. Scott is he is a soliciting agent of agents, and they stopped there. Now, what I am trying to show is he went further than that; he made representations not only to his own agents, but to the company, and they acted on them. There is the thing that speaks volumes for his activities. In other words, we are going to connect this particular portion of our testimony, from 1934 to 1939——

The Court: If you do that, I will permit it. The objection is overruled.

Mr. Goldstein: Yes, sir. In other words, I have

(Testimony of R. F. Urquhart.)

no objection to Mr. Scott making the motion to strike this out of the record.

(The documents referred to were marked Defendants' Exhibit J in evidence.) [139]

Mr. Goldstein: While the Clerk is marking that I will show you another one in 1938.

Your Honor, may I be permitted to show this to the jury?

The Court: Yes.

Mr. Goldstein: I would like to pass that to the jury.

(Defendants' Exhibit J was passed to the jury.)

Mr. Scott: Are you offering this?

Mr. Goldstein: I will in just a moment.

Mr. Scott: Might I just register the same objection for the same reasons?

The Court: The same ruling.

Mr. Goldstein: May I just show this to His Honor while the jury is looking at that one (handing document to the Court)?

Q. On the bottom here is written "L. K. Fer-eva and Urquhart" (exhibiting document to the witness). A. That is right.

Q. Do you remember what that means, Mr. Urquhart?

A. Is this the one you showed me a moment ago?

Q. Yes, that is the one I showed you a moment ago. A. No, that is not my signature.

Q. No, I understand that, but——

(Testimony of R. F. Urquhart.)

A. San Francisco.

Q. That is right, but do you know what that means? A. What it means?

Q. Yes.

A. When a policy is written up there are four dailies written up with each policy; one goes with the policy, one goes to the home office, one stays in the San Francisco office, and this is written on here to identify it comes to my district, it is mailed to me.

Q. Now I call your attention to it, that refreshes your recollection that the policy is mailed to you for delivery to Mr. [140] Fereva, does it not?

A. Not as a rule. The policies don't come to me; they go direct to the agent. I get the daily copy.

Q. Just a moment. You said a moment ago that reminds you that it probably was mailed to you. A. No, I didn't say that.

Q. What did you say?

A. I said the daily.

Q. Don't you get the original copy?

A. Not to my knowledge.

Q. Let me pass this a moment. Let's take the year 1938. Take a look at this one. Look at it. Look at the name down there, "L. K. Fereva and Urquhart" (exhibiting document to the witness).

A. That is the same thing.

Q. Who is the policy sent to? A. No, sir.

Q. Not to you? A. No, sir.

(Testimony of R. F. Urquhart.)

Q. Take a look at the policy. See if that is not a duplicate of that. A. Certainly it is.

Q. Who is that policy sent to from Wentz & Erlin in San Francisco?

A. As far as my knowledge is concerned, it was sent directly, as it was always done.

Q. All right. If it was sent direct to Mr. Fereva, was it in this form (exhibiting document to witness)? A. That sticker?

Q. Yes.

A. That is put on in San Francisco when the policy is sent out.

Q. That is exactly what I want to find out.

Now, if your Honor pleases, I am going to offer in evidence a policy for public liability and property damage issued by the plaintiff corporation on December 16, 1937, for the fiscal year December 16, 1937, to December 16, 1938, and I will follow it with the next policy. Now, this is just the year previous to the one in question, and I want to offer this in evidence for the sole purpose of proving the endorsement upon the policy, which has been the bone of contention here for several days, as it is [141] identified by the witness as having been mailed directly from Wentz & Erlin in San Francisco to L. K. Fereva.

Mr. Scott: Objected to as incompetent, irrelevant and immaterial; the contract is one for the year previous. It has expired, and has nothing to do whatsoever with this action.

The Court: The objection is overruled.

(Testimony of R. F. Urquhart.)

(The insurance policy referred to was marked Defendants' Exhibit K in evidence.)

Mr. Goldstein: Q. I will show you four policies, Mr. Urquhart, one dated May 10, 1939, one dated January 30, 1940, one dated May 10, 1940, and one dated May 10, 1941, and ask you to look at those and state whether or not those are policies of this plaintiff corporation, and whether those were mailed to Mr. Fereva directly from Wentz & Erlin?

A. Well, that I couldn't tell you, about the mailing.

Q. Well, you didn't mail them to him, did you?

A. Not to my knowledge. If any policies for nearby agents would be delivered to me, the chances are I would deliver them in person.

Q. You notice, do you not, Mr. Urquhart, all four of these policies bear the same endorsement?

A. Same sticker, yes.

Q. Same sticker. R. F. Urquhart, District Representative. That was your title, wasn't it?

A. That was a copy of a sticker that I had used for quite a number of years.

Q. Wasn't that your title when these policies were sent to Mr. Fereva?

A. I haven't ever heard of having a special title.

Q. Well, the stickers were in San Francisco, as you testified a moment ago? A. That is right.

Q. They were put on by Mr. Wentz, or some-

(Testimony of R. F. Urquhart.)

one in Wentz & Erlin? Mr. Fereva didn't have these stickers, did he? A. No.

Q. You never gave him any? A. No.

[142]

Q. Or to your knowledge, no one else put them on? A. No.

Mr. Goldstein: Now, I am going to offer these in evidence—I offered them for identification previously, because I couldn't show the authority for the endorsement—now, I am going to offer them in evidence as additional evidence of the ostensible agency of this witness, now that I have identified the source of the endorsements.

Mr. Scott: The same objection.

The Court: The same ruling.

(The four policies referred to were marked Defendants' Exhibit L in evidence.)

Mr. Goldstein: I would like to have the jury see these policies I have been talking about. It will just take a moment, your Honor, to get that clear.

(Defendants' Exhibit L were passed to the jury.)

Mr. Goldstein: If your Honor pleases, I have also shown these two documents to counsel. This is a change of policy effective December 16, 1938—to run from December 16, 1938, to December 16, 1939, wherein the limits were changed from ten thousand and forty thousand to seventy-five hundred and thirty thousand, and I am going to offer

(Testimony of R. F. Urquhart.)

this in evidence, the witness having identified the handwriting of the changes as is, and having testified that this copy was sent to him, and the original sent to Mr. Fereva. This is to verify the manner and form in which the endorsements were put on the policies, and the notations on it—I will identify the notations here.

Q. You know Mr. Keil, do you not, Mr. Urquhart? A. Yes.

Q. I will show you this memorandum here with the initials "J.F.K." That is his handwriting, is it? A. Those are his initials, yes. [143]

Mr. Scott: "J.F.K.," or "G.F.K."?

Mr. Goldstein: Did I say "J.F.K."? I am sorry. It is "G.F.K."

Mr. Scott: We make the same objection.

The Court: Same ruling.

(The change of policy referred to was marked Defendants' Exhibit M in evidence.)

Mr. Goldstein: Q. At the time you sent in that change for the new policy you wrote this memorandum, did you not, Mr. Urquhart, to the company? That is correct, is it? A. Yes.

Mr. Goldstein: I offer in evidence the memorandum accompanying the notice of change for the limits of the policy marked Defendants' Exhibit K, and ask to have this marked as a special exhibit next in order, and I would like to read it.

The Court: Admitted.

(The memorandum referred to was marked Defendants' Exhibit N in evidence.)

(Testimony of R. F. Urquhart.)

Mr. Goldstein: It is an inter-communication memorandum:

“Potomac Insurance Company

“Philadelphia

“From R. F. Urquhart

“To R. Garsen

“Subject: A.G. 991200—L. K. Fereva DBA Fereva
Chevrolet Co.

“Please have the above renewed as of this date,
it's my boot that renewal wasn't order.”

Q. Now, Mr. Urquhart, is it not a fact that again the next year, in 1939, you made all arrangements in connection with the issuance of the policy dated December 6, 1939, effective as of December 16, 1939, to December 16, 1940?

Mr. Scott: Pardon me. Objected to—— [144]

The Witness: Just what do you mean?

Mr. Scott: Well, that is the objection. In other words, “made all the arrangements”——

Mr. Goldstein: Very well.

Q. I will show you this memorandum from Defendants' Exhibit I, and ask you if that is your handwriting (exhibiting document to the witness)? Just look at that and see if that is in your handwriting? A. That is my handwriting, yes.

Q. All right, now, Mr. Urquhart, the policy from December 16, 1937, to December 16, 1938, was for ten thousand limit one person, forty thousand one accident. Just look at this. An estimated payroll seven thousand, is that right?

(Testimony of R. F. Urquhart.)

A. Presumably, yes.

Q. Well, there is the policy in front of you. Look at it, Mr. Urquhart. Not presumably, but absolutely; isn't that true? That is true, isn't it?

A. It says on the face of the policy——

Q. You still won't admit it, is that what you mean? A. No; it is right on the policy.

Q. It is true, is it not—and I would like to have a definite answer, Mr. Urquhart—that the policy from 1938, December 16, to December 16, 1939, was ten thousand limit for one accident—one person? A. December when?

Q. From December 16, 1937, to December 16, 1938. A. I thought you said 1939.

Q. I beg your pardon; 1938.

A. Ten and forty thousand limits of liability, and \$7,000 estimated total payroll, yes.

Q. All right. By that communication you changed the terms? A. No, sir.

Q. What did you do?

A. Only at the request of Mr. Fereva.

Q. Mr. Fereva made the request to you?

A. Yes, sir; to get the premium down. [145]

Q. And you discussed it with him?

A. Yes, sir.

Q. Then after that you prepared this memorandum and sent it to the home office, did you not?

A. After he had agreed to change it.

Q. And you put in here:

“R. F. Urquhart At Sacramento

“To Home Office George Keil Date 12/2/39

(Testimony of R. F. Urquhart.)

"In Re The attached notice of expiration for Fereva, please renew this with the following changes.

"Estimated Total Payroll \$5000.00"—

Does that mean "audits"? A. Yes.

Q. (Reading): "(audits show 2600.00)

"Limits of Liability—P.L. 7500/30000"—
which means seventy-five hundred for one person and thirty thousand for one accident—

"P.D. 5000

"Limited Form D.O.C.—Bessie K. Fereva

" " " —L. K. Fereva."

Then you put on here:

"Have policy etc mailed to me for delivery as I believe premium will be financed."

A. On that particular policy, right.

Q. What did you mean by that, Mr. Urquhart?

A. Which?

Q. This last statement.

A. When the policy premium was financed I would take the insured to have the finance papers made out for the policy, and deliver to him with the policy.

Q. What did that consist of?

A. There were certain forms that had to be made out in triplicate, showing the down payment, monthly payment, and the interest, and this had to be signed and sent to the finance company. [146]

Q. And you took care of that?

A. As an accommodation, yes.

(Testimony of R. F. Urquhart.)

Q. So this policy came to you directly as requested? A. It did.

Q. And then——

Mr. Goldstein: Is the policy in chambers?

The Court: Did you wish it?

Mr. Goldstein: I will get it after recess. I have a copy here.

Q. Then the policy I just asked you about under this inter-communication from your office to Mr. Keil was sent to you and you delivered it to Mr. Fereva, and this is the copy changing the limits?

A. That is just a copy of the original policy.

Q. Yes, a copy.

For the purpose of the record, I showed the witness a copy taken from the complaint of the plaintiff here, which is appended as Exhibit A, which is unquestionably a duplicate, or rather, a correct copy of the original policy in question, because I don't have the original here.

Now, Mr. Urquhart, I will start in from the time when you went with Wentz & Erlin. Did Mr. Fereva report to you accidents that happened to automobiles that that company had insured for him or others?

A. I don't recall of Mr. Fereva ever having reported an accident of any description to me.

Q. Are you sure of that?

A. I am positive of that.

Q. Did Mrs. Fereva, his wife, ever report any accidents to you?

(Testimony of R. F. Urquhart.)

A. Not to my memory. I don't believe we ever paid a loss for Mr. Fereva.

Q. Do you know of any accidents at all that were ever reported to [147] you prior to February 5, 1940?

A. The only one I recall of Mr. Fereva reporting to me was one accident he told me about up in Auburn someplace.

Q. When was that?

A. I couldn't tell you, because I paid no attention to it.

Q. Do you know what year it was?

A. I don't.

Q. How was it reported to you?

A. Verbally.

Q. Where? A. I don't know.

Q. Anyhow, after he made the report to you, you sent someone up to investigate it?

A. I don't know whether the report came from Fereva or Henretty.

Q. You don't know that, even?

A. On that accident.

Q. Do you know Mr. Walter Henretty?

A. Yes.

Q. How long have you known him?

A. I imagine 14 or 15 years.

Q. You have him working on these losses, do you not, for this company?

A. No; report them to him.

Q. On whose instructions did you report them to Mr. Henretty?

(Testimony of R. F. Urquhart.)

A. That I report them to him?

Q. Yes. A. Yes.

Q. At whose instructions?

A. Just my own initiative, I guess.

Q. Wasn't it part of your duties?

A. Yes.

Q. In line with your duties as district representative of this company in Northern California, if an accident was reported to you you reported it to Mr. Henretty? A. Yes.

Q. You did it many times?

A. With the company's business?

Q. Yes. A. Yes.

Q. I am speaking of 1934.

A. You mean the general line of business?

Q. I am speaking of this particular company, the plaintiff [148] corporation. When an accident was reported to you you reported it to Mr. Henretty? A. Yes.

Q. And these reports were made verbally?

A. I made all of them verbally.

Q. You don't know what he did with them after you told him?

A. I don't know; I never followed it up.

Q. Don't you know whether he investigates those and goes out and gets witnesses?

A. I presume he does.

Q. You presume he does. Don't you know he does? A. No.

Q. Where is your office located in connection with Mr. Henretty's?

(Testimony of R. F. Urquhart.)

A. I was in the Ochsner Building; he was in the Bank of America.

Q. You saw him frequently since 1934?

A. Yes.

Q. You know what his general business in connection with these accidents was?

A. That is right.

Q. Isn't it a fact you sent him up to Mr. Fereva on several accidents, and that he investigated several accidents that Mr. Fereva personally had, and some of his customers had?

A. It is not a fact that I sent him up to Mr. Fereva. I reported it to him, and I presume he went up there.

Q. That is what I want to find out. Could you give this jury any idea of how many of those reports you made to Mr. Henretty?

A. With Mr. Fereva's business?

Q. Yes.

A. There have been very, very few. Now, I don't know how many there were.

Q. As many as five? A. I doubt it.

Q. Four? A. Possibly.

Q. You aren't sure of that?

A. No, I am not.

Q. Why couldn't there be more than five?

A. Because we have had so very few losses on Mr. Fereva's business.

Q. Do you know Mrs. Fereva?

A. Do I know Mrs. Fereva? [149]

Q. Yes. A. Very well.

(Testimony of R. F. Urquhart.)

Q. Did she report to you here some accident that occurred up there?

A. She may have; I don't recall.

Q. You wouldn't say she didn't?

A. No, I wouldn't say she didn't.

Q. And that was done orally, by word of mouth?

A. As far as I know, yes.

Q. Can you tell this jury any time when you ever received any written report from Mr. Ferreira?

A. Not to my memory, I don't recall.

Q. Isn't it a fact, Mr. Urquhart, that Mr. Ferreira at no time during your association with him as an agent, ever gave you a written report of an accident?

A. As far as I recall, it is.

Q. Just a few more questions, Mr. Urquhart. What has been your salary in connection with your office?

A. Why that question?

Q. Just to show the strength and the ability, and the integrity that you have, and they confide in you, Mr. Urquhart. It is necessary for my purpose.

A. It is on a \$200 a month basis, plus the operation of the automobile.

Q. In other words, in addition to your salary you get your expenses and travel expenses?

A. They don't amount to anything. I have been home every night.

Q. And you have been running the office alone? You have been the only man in that office, is that right?

A. The only man in the office.

(Testimony of R. F. Urquhart.)

Q. And in the telephone listing you have always listed yourself, have you not, as follows: "R. F. Urquhart, Wentz & Erlin, Ochsner Building"? That is correct, is it? A. Yes. [150]

Q. So if anybody picked up the phone book to talk to you, they knew they were talking to someone representing Wentz & Erlin, isn't that right?

A. That is right.

Mr. Goldstein: That is all, your Honor, for the present.

Cross Examination

By Mr. Scott:

Q. Mr. Urquhart, did Mr. Fereva at any time before he came to your office on April 26——

A. Had he, before he came to my office?

Q. On April 26—did Mr. Fereva at any time report to you the happening of an accident in the month of February——

Mr. Goldstein: Just a minute. Don't answer it. I want to make my objection.

Mr. Scott: Pardon me. Let me finish my question.

The Court: One at a time, gentlemen.

Mr. Scott: Q. ——the happening of an accident on February 25, 1940?

Mr. Goldstein: Just a minute, Mr. Urquhart. Don't answer that question.

If the Court please, I am going to object to it on the ground it is not proper cross examination. I didn't go into it. I just put this man on for an

(Testimony of R. F. Urquhart.)

entirely different purpose. It is not proper cross examination.

The Court: The objection is overruled.

Mr. Scott: Q. Have you my question in mind, Mr. Urquhart?

A. Yes, I think I have. Am I to answer it, or not?

Q. Yes; please answer it.

The Court: Let the reporter read the question.

(The question referred to was read by the reporter as follows:

“Q. Mr. Urquhart, did Mr. Fereva at any time before he came to your office on April 26, did Mr. Fereva at any [151] time report to you the happening of an accident in the month of February, the happening of an accident on February 25, 1940?”)

The Witness: You mean this accident of his own?

Mr. Scott: Q. Yes.

A. No, sir. [152]

LEON KARL FERREVA,

Recalled for the Defendants; Previously sworn.

Mr. Hogle: If your Honor please, in behalf of the Defendant Fereva, I would like to have it stipulated—move that all of the testimony of the defense—of all the defendants, of all the co-defend-

(Testimony of Leon Karl Fereva.)

ants, be considered as part of Mr. Fereva's defense, as one of the co-defendants also. I suppose there will be no objection to that, Mr. Scott?

Mr. Scott: No objection.

The Court: That is, the co-defendant you represent?

Mr. Hogle: Yes.

The Court: So ordered.

Direct Examination

By Mr. Goldstein:

Q. Mr. Fereva, you stated to the jury, I believe, last Monday, that you went out of business at some time at the end of 1940 or this year?

A Yes, sir.

Q. What became of your records? Did you keep your records, or what happened to them?

A. In going out of business, many records and files—most of them were destroyed. My home had no place to keep them. The majority were discarded.

Q. Now, Mr. Fereva, I will just commence with you from the time that you became an agent for the plaintiff corporation. Will you please tell the jury who got you to be an agent?

A. Mr. Urquhart.

Q. Did you know Mr. W B. Wentz?

A. No, I did not. [153]

Q. Did you ever meet his partner, Mr. Erlin?

A. No, sir, I never saw him.

Q. Did you ever meet a single person from the office of Wentz & Erlin in San Francisco other

(Testimony of Leon Karl Fereva.)

than Mr. Urquhart in connection with your insurance, Mr. Fereva?

A. As far as I remember, no.

Q Now, commencing, let us say, in 1934, who did you report any accidents to, or any losses in connection with any policies issued to you or your clients?

A. Mr. Urquhart.

Mr. Scott: Objected to as incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

Mr. Goldstein: Q. What was the answer?

A. Mr. Urquhart only.

Q. How did you report it to him?

A. Personally; sometimes by phone

Q. Sometimes by phone and sometimes when he was in your place of business?

A. Yes.

Q. And after you reported any accident or loss to yourself or clients, what did he do?

A. Well, he turned it over to the authorities, I guess.

Q. What happened after that?

A. It was taken care of.

Q. Will you please tell the jury, between 1935 and February 25, 1940, how many accidents you had, or your clients had in Lincoln or Placer County, that you reported to Mr. Urquhart?

A. My own, personally?

Mr. Scott: May I have the understanding this is all subject to my objection, this whole line is subject to my objection that it is incompetent, irrelevant and immaterial?

(Testimony of Leon Karl Fereva.)

The Court: Yes. [154]

The Witness: My own, personally, or any of them?

Mr. Goldstein: Q. Any of them.

A. Many of them.

Q. How many, Mr. Fereva?

A. A dozen or fifteen, the persons I had insured.

Q. No; just your own, that you carried insurance on, public liability and property damage.

A. You mean my own, personally?

Q. That is right.

A. Well, there have been several of them.

Q. Can you give us the names of any of them?
I mean, any persons connected with them?

A. Yes; one of my salesmen, Mr. Smith; a prospective buyer by the name of Mr. Clark; Mrs. Christianson; at one time I had a partner by the name of Gianachi.

Q. And these instances were accidents, were they?
A. Yes.

Q. How did you report them to Mr. Urquhart?

A. Either verbally, or by telephone.

Q. After your report, were those accidents disposed of by the plaintiff company?

A. Yes, sir.

Q. Do you know Mr. Walter Henretty, sitting back there?
A. Yes, sir.

Q. Would you please tell the jury whether or not prior to the 25th day of February, 1940, he came up to your place and investigated accidents you reported to Mr. Urquhart?
A. Yes, sir.

(Testimony of Leon Karl Fereva.)

Q. How many, would you say?

A. I would say he was in the office many times—probably not on business for me, but he was in the office many times. At least three or four.

Q. At least three or four accidents?

A. Yes, sir.

Q. Were those accidents reported to Mr. Urquhart verbally, or——

A. They were either by phone or verbally.

Q. That is what I have reference to. Now, on the occasion just, [155] say, a year prior to the time you got this policy, do you remember having an accident somewhere around Auburn, which was reported to Mr. Urquhart? Do you remember the occasion?

A. I don't remember of any up at Auburn.

Q. Maybe I have the place wrong. Do you remember an accident to one of your cars, one of your salesmen?

A. Yes.

Q. When was that in connection with the time this accident happened?

A. Probably around 1937.

Q. Around 1937. Did you report that to Mr. Urquhart?

A. Yes, sir, I did.

Q. Verbally?

A. I wouldn't say whether it was verbally or by phone.

Q. Either way. At any rate, what became of that case?

A. It was settled.

Q. Who gave you your instructions in connection with how to issue policies in regard to this

(Testimony of Leon Karl Fereva.)

plaintiff corporation, the General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland?

A. Mr. Urquhart.

Q. Did he give you any instructions as to how to insure people on automobile contracts when you sold an automobile?

A. Yes, he sat down at my desk and talked it over; yes.

Q. What instructions did he give you as to how to insure a man?

A. Well, there were certain forms of books to go by. The forms were all made out. He instructed me how to make out the forms and check them over as to the amount of insurance they wanted to carry.

Q. If you sold an automobile at your place in Lincoln, did you insure a man right there on the spot?

A. I did.

Q. For public liability and property damage?

A. I did.

Q. Did you do that at the instructions of Mr. Urquhart?

A. Yes, sir. [156]

Q. Did you do that for a long time?

A. Yes, sir; for many years.

Q. Now, in connection with this policy of insurance in question, No. AG1556, which was issued on December 6, 1939, to take effect on December 16, 1939, who was the one who changed the limits of liability from the ten thousand and forty thousand that you had the year previous, to seventy-five hun-

(Testimony of Leon Karl Fereva.)

dred for one person and thirty thousand for one accident? A. Mr. Urquhart.

Q. Did he finance that premium, by the way?

A. I believe it was.

Q. Did he make all arrangements with respect to the policy? A. Yes, sir.

Q. Did you follow his instructions implicitly at all times? A. Yes, sir.

Q. Now, on all these policies, whether they were issued to yourself or to others, did you receive your regular commission in all the years from 1934 up to the time you left the business, July 1, 1941?

A. Yes, sir.

Mr. Goldstein: As an exemplar of the manner in which those commissions were paid, Mr. Scott, he not having any books prior to the accident, I have two statements, one dated February 13, 1941, and one dated March 6, 1941, I desire to offer in evidence. It is only to show the manner——

Mr. Scott: I suggest that is encumbering the record. I submit all the testimony shows that the gentleman has been paid commissions throughout, and we produced the records, if your Honor pleases, and they have all been introduced in evidence.

The Court: Proceed.

Mr. Goldstein: I desire to offer these two statements as Defendants' Exhibit next in order.

The Court: Admitted. '[157]

(The statements referred to were marked Defendants' Exhibit O.)

(Testimony of Leon Karl Fereva.)

Mr. Goldstein: Q. Now, after you had this accident on February 25, 1940, did you make any report of that to anyone immediately?

A. Why, verbally, to Mr. Urquhart, within a few days of the accident. It is difficult at times to get him on the phone, and I would wait until he came to my place of business to make it personally.

Q. Mr. Fereva, do you recollect the occasion when you had that accident with the tow car in the early morning of February 25?

A. Yes, I remember it very well.

Q. Will you please tell the jury approximately how long after that date did you see Mr. Urquhart at your place of business?

A. It was within a very short length of time; within three to seven days.

Q. Where did you see him?

A. In front of my place of business.

Q. By the way, was your wife working there at that time?

A. She kept the books for me.

Q. She kept the books for you. Was she in the premises at the time?

A. I could not say as to that.

Q. All right. Now, you met him at the front of your establishment?

A. Yes.

Q. What kind of door do you have leading into the establishment, just an ordinary office door, or double garage doors, or what?

A. Two big rolling doors that rolled up and left pretty near half the building open.

Q. Now, did you know right along, from the time

(Testimony of Leon Karl Fereva.)

you knew Mr. Urquhart that, very unfortunately, he was afflicted with his hearing—he was hard of hearing? A. Yes, sir.

Q. Did you get along with him? Did he understand you and did you understand him? [158]

Mr. Scott: I object to that as calling for a conclusion of the witness.

The Court: It is a conclusion.

Mr. Goldstein: It is purely preliminary, your Honor.

Mr. Scott: I submit the objection, your Honor.

The Court: The objection is sustained.

Mr. Goldstein: Q. Now, at the time that he came to your place of business, will you tell the jury just exactly what conversation you had with him in connection with this accident?

A. At the time Mr. Urquhart came to my place of business—my shop foreman had called me back to the shop for some minor adjustments on the tow car which was damaged in the accident, and while I was standing there conversing with my shop foreman Mr. Urquhart came to the front of the building and I left the shop foreman to go out and converse with him.

The Court: Speak a little louder.

Mr. Goldstein: Q. Speak a little louder, Mr. Fereva, and go ahead and tell what the conversation was.

A. Why, when I went out to meet Mr. Urquhart, why, we passed the time of day; then I said, “Bob, I want to report a little crackup I had down the high-

(Testimony of Leon Karl Fereva.)

way the other morning with my tow car." I said, "I was called out in the morning to go out to pull a car out of the ditch, and while I was towing the car out of the ditch another car ran into the car we were towing out. There were several people injured; they were scratched and bruised, but nothing serious." I think that is about the extent of our conversation.

Q. Then what happened as you were talking to him?

A. Why, as it happened, that day my service manager was off—in other words, my men alternated; each man had a day off—and I [159] worked on Sunday, and I was very busy taking my service man's place, and customers came in, and I left Mr. Urquhart standing in front of the building to wait on the customers.

Q. Now, Mr. Fereva, what you told Mr. Urquhart on that occasion, was that the same form in which you had made accident reports to him prior to that time?

A. Yes, sir.

Q. And on which he acted and sent a man up to your place?

A. Yes, sir.

Q. Do you remember an occasion—I don't want anything said to you by your wife—but do you remember an occasion some day or two after Mr. Urquhart was there, about your wife desiring to notify Mr. Urquhart?

A. Yes, I remember that.

Q. And don't tell the conversation, but did you

(Testimony of Leon Karl Fereva.)

have a conversation with her at that time as a result of which you did not call Mr. Urquhart?

A. Yes, sir.

Mr. Scott: Just a minute. I object to that as hearsay——

Mr. Goldstein: I am not asking for hearsay; I am asking for circumstances. It is preliminary only, and corroborative circumstances of whether or not the conversation took place, whether the circumstances of his wife desiring to report to the office two or three days after the accident—this was five or seven days after the accident—I am not asking for the conversation; I am asking for the circumstances.

Mr. Scott: I submit it is hearsay.

Mr. Goldstein: Very well, counsel, I will withdraw the question for a moment. I will prove it in a different way, your Honor.

Q. Now, Mr. Fereva, after you had that conversation, did you believe that Mr. Urquhart would act upon your statement to him, the same as he did in prior accidents that you reported to him in [160] the same way?

Mr. Scott: Objected to as incompetent, irrelevant and immaterial.

Mr. Goldstein: It is the gist of our case, your Honor——

The Court: The objection is overruled.

A. Yes, sir.

Mr. Goldstein: Q. Did you have any reason to believe at all that he would not act as he had in

(Testimony of Leon Karl Fereva.)

prior accidents that you reported for yourself and others whom you had insured in this plaintiff corporation?

Mr. Scott: Same objection.

The Court: The objection is overruled.

A. No, sir.

Mr. Goldstein: Q. Now, subsequent to that time, you were served with a summons and complaint, were you not? A. I was.

Q. Plaintiff's Exhibit No. 2. Now, a little after you were served with these papers, what did you do with them?

A. I took the papers to Sacramento, to Mr. Urquhart's office.

Q. And did you there have a conversation with him? A. Why, some, yes.

Q. Well, what did he say to you?

A. I turned the papers over and he said, "We will go over to Mr. Henretty's office and we will take the matter up with him."

Q. And did he then take you to Mr. Henretty's office, along with the summons and complaint that you handed him? A. Yes, sir.

Q. In order to get this clear, Mr. Fereva, did you go any place, or did Mr. Urquhart phone to San Francisco or any place before he took you to Mr. Henretty's office with the summons and complaint?

A. He phoned Mr. Henretty's office first. [161]

Q. He phoned Mr. Henretty's office; but did he phone to San Francisco or any place else before you went to Mr. Henretty's office?

(Testimony of Leon Karl Fereva.)

A. Not to my knowledge.

Q. And then you went to Mr. Henretty's office, you and Mr. Urquhart, and who gave these papers to Mr. Henretty?

A. I wouldn't say whether Mr. Urquhart did, or I.

Q. Did Mr. Henretty ever ask you if you had made any verbal report to Mr. Urquhart at that time; any oral report?

A. I think he did; I am not sure.

Q. All right. What did you say to him, if he did ask you?

Mr. Scott: Just a moment. That is a pure guess. Object to the form of the question as extremely objectionable.

Mr. Goldstein: Let me withdraw the question for the moment.

Q. Mr. Fereva, did you ever file with Mr. Urquhart, or Mr. Henretty, prior to the 25th day of April, 1940, any written report about your cars, any of your cars, or any of your clients' cars?

A. There was no occasion to report to Mr. Henretty; it was all with Mr. Urquhart.

Q. Did you ever file a written report to Mr. Urquhart?

A. I don't know of any. Very few, if any.

Q. Is this the first time that you signed any what purports to be a written report—the first time you signed any report like that (exhibiting document)?

A. To my knowledge, yes.

(Testimony of Leon Karl Fereva.)

Q. And Mr. Henretty prepared that?

A. I presume he did, yes.

Q. Now, did he ask you anything as to why you did not file a written report? Do you remember any conversation regarding that?

A. Well, he asked something about if a report had been filed.

Q. Now, what did you understand he was referring to, Mr. Fereva?

Mr. Scott: Just a moment. I object to that as calling for [162] a conclusion of the witness.

The Court: Yes. The objection is sustained.

Mr. Goldstein: Q. What kind of a report was he talking about?

A. I presume he was referring to a written report.

Q. Did you tell him you had not filed a written report? A. I believe I did, yes.

Q. Did you ever tell him you had not notified Mr. Urquhart personally, or orally?

A. No, I didn't.

Q. Did he ever ask you about that at all?

A. Yes; he asked me one question on that.

Q. What did you tell him, that is what I want to find out.

A. Well, he asked me why this wasn't reported—I can't quite place it. I said, "Yes, it has been reported." He said, "Why didn't you report it again?" I said, "I didn't think it was of enough importance, because the Highway Patrol exonerated

(Testimony of Leon Karl Fereva.)

me, and Mr. Urquhart had taken no further action with it, and that was the length of my report."

Q. That was the sum and substance of your conversation with Mr. Henretty? A. Yes, sir.

Q. And when he was talking to you was he referring to this written report?

A. I presume he was.

Q. Now, Mr. Fereva, did you report the occurrence of the accident to the Highway Patrol in Lincoln?

A. Within 30 minutes after the accident.

Mr. Scott: Object to that as immaterial.

The Court: What is the materiality of that?

Mr. Goldstein: Perhaps not. I will withdraw it. There is another matter that in my opening statement I touched upon; however, I am going to abandon it. It isn't evidence, what an attorney says in an opening statement, so I will withdraw the [163] question.

Q. At any rate, after you signed this written report, did Mr. Henretty come up to your place and investigate the accident?

A. Yes, sir; he was there many times.

Q. Did you give him every assistance he desired? Did you go with him to interview witnesses and cooperate with him in every way in that connection?

Mr. Scott: Just a moment. Objected to as calling for a conclusion of the witness.

The Court: The objection is sustained. Let him state what he did.

(Testimony of Leon Karl Fereva.)

Mr. Goldstein: Q. Just what did you do with Mr. Henretty when he came up there to investigate the accident?

Mr. Scott: Same objection; and incompetent, irrelevant and immaterial. There is no question but we went in and investigated the accident. It is admitted in the pleadings, and there is no dispute about it.

Mr. Goldstein: If your Honor pleases, there is somewhat more to it than that. Your Honor will recall that in the testimony of Mr. Henretty——

The Court: All right; if it is desired to contradict Mr. Henretty——

Mr. Goldstein: Very definitely so.

Mr. Scott: All right; withdraw the objection.

Mr. Goldstein: Q. Will you state what you did with Mr. Henretty?

A. Mr. Henretty took all the statements and briefs of my shop foreman, and several people who passed by and seen the accident, there were several he interviewed and took statements, and most of it was in my office, typed and signed in my office. [164]

Q. Did you assist Mr. Henretty in obtaining the witnesses you named to him?

A. In every way possible.

Mr. Scott: We object to that as incompetent, irrelevant and immaterial. I have no objection if it is contradicting a statement of Mr. Henretty, but the mere showing that Mr. Henretty accompanied the defendant and Mr. Desmond—that is not material; it is all admitted in the pleadings, not at

(Testimony of Leon Karl Fereva.)

issue. The question is whether before the reservation of rights notice had been served, the proper notice had been given. That is the issue in the case.

Mr. Goldstein: Your Honor will recall Mr. Henretty volunteered certain evidence here that he could not get certain witnesses because it was too late. I want to show now that every witness that was available was there and testified, and there was no witness missing, so as to combat the inference Mr. Henretty tried to raise through his volunteered statement that there might be some prejudice to the rights of the company.

(Further argument.)

The Court: The objection is overruled. Proceed.

Mr. Goldstein: Will you read the question, Mr. Reporter?

(The last question and answer were read by the reporter.)

Mr. Goldstein: Q. Did you and Mr. Henretty interview and have in court in the defense of this action all the witnesses that you knew anything about in connection with this accident?

A. We did.

Q. What did Officer La Porte—did he know anything about that accident?

Mr. Scott: Just a moment. Objected to as incompetent, irrelevant and immaterial.

The Court: The objection is sustained. [165]

Mr. Goldstein: Q. Were you present at any

(Testimony of Leon Karl Fereva.)

conversation between Mr. Henretty and Officer La Porte?

Mr. Scott: The same objection.

Mr. Goldstein: I am asking if he was present, your Honor. I don't know whether he was or not.

The Court: You may answer.

A. I was not.

Mr. Goldstein: Q. Did Mr. Henretty make any complaint to you at any time, of any kind, because of your delay in giving him this written report, that he could not get Officer La Porte to testify in his behalf? A. No, sir.

Q. Did he ever make any statement to you in connection with Officer La Porte? A. No, sir.

Q. Did he ever make any statement to you in connection with any witnesses whom he claimed should have been there and could not be there?

A. No, sir.

Q. You were present at that trial of that case right throughout? A. Yes, sir.

Q. And you were defended by Mr. Gerald M. Desmond of Sacramento? A. Yes, sir.

Mr. Goldstein: You may take the witness.

Cross Examination

By Mr. Scott:

Q. Mr. Fereva, do I understand you correctly in stating as follows: that within a few days after the happening of the accident Mr. Urquhart drove up in his automobile in front of your place of business in Lincoln; is that correct?

A. That is correct.

(Testimony of Leon Karl Fereva.)

Q. And he sat there in his car——

A. No, no, he was out of his car.

Q. He got out of his car, did he?

A. Yes. [166]

J. And then you said to him——

Mr. Goldstein: Page 9, Mr. Scott, if I may assist you.

Mr. Scott: Q. You said to him, “Bob, I had a little crackup down the highway with the tow car”?

A. Yes, sir.

Q. You said, “The other morning we had a call to tow a car out of the ditch, and while we were there towing that out a car ran into the car which was being towed”?

A. That is right.

Q. “There was quite a little crackup and they were cut and bruised, but nothing serious”?

A. Yes, sir.

Q. That is all you told him?

A. Practically all.

Q. At that moment someone called you to your place of business?

A. Yes, sir.

Q. When you came out again after seeing a customer or two, Mr. Urquhart had gone on his way?

A. Yes.

Q. That was the whole conversation?

A. That was the whole conversation.

Q. You didn't ask Mr. Urquhart to do anything about it?

A. I just reported it to him.

Mr. Scott: Will you read the question, Mr. Reporter?

(Question read.)

(Testimony of Leon Karl Fereva.)

Mr. Scott: Q. You didn't ask Mr. Urquhart to do anything whatever about it?

A. Our conversation was interrupted at that time.

Q. You didn't tell him when the accident had happened, did you? A. You mean——?

Q. The time. A. Yes; in the morning.

Q. You just said, "The other morning"?

A. Yes.

Q. You didn't tell him to whom the accident happened? [167]

Mr. Goldstein: Speak up, Mr. Fereva.

A. The conversation wasn't completed.

Mr. Scott: Q. You didn't tell him where the accident happened?

A. Why, nothing more than "down the highway."

Q. You didn't even tell him what highway, did you?

A. I don't remember telling him between Lincoln and Roseville; but we were interrupted, that is why. We just got into our conversation and it was interrupted.

Q. You told him, "Just the other day I had a little crackup down the highway with the tow car"?

A. Yes, sir.

Q. You didn't tell him down what highway?

A. Probably not.

Q. You didn't tell him anything but just what I asked you, namely, this: "Bob, I had a little crackup down the highway with the tow car the

(Testimony of Leon Karl Fereva.)

other morning. We had a call to tow a car out of the ditch, and while we were towing them out a car ran into the car which was being towed. There was quite a little crackup, and they were cut and bruised, but nothing serious." Now, that is all you told him? A. Probably.

Q. And that statement was given by you in your deposition on May 10th of this year?

A. It was taken here in Sacramento. I couldn't say the date. I think that is correct.

Q. And it was read over to you? A. Yes.

Q. And your recollection then, and at the present moment, is that is everything you said to Mr. Urquhart? A. Yes, sir.

Q. At that time Mr. Urquhart made no reply to you?

A. No. As I said, our conversation was interrupted.

Q. And you had known for some 14 years that Mr. Urquhart was a very deaf man?

A. Yes; I had talked to him, yes.

Mr. Scott: That is all, your Honor. [168]

MRS. BESSIE K. FEREEVA,

called for the defendants; sworn.

The Clerk: Q. Please state your name to the Court and jury.

A. Mrs. Bessie K. Fereva.

Direct Examination

By Mr. Goldstein:

Q. Speak up a little louder, Mrs. Fereva, so the reporter and jury can hear you. You reside at Lincoln? A. I do.

Q. You are the wife of Mr. L. K. Fereva who preceded you on the witness stand? A. I am.

Q. How long have you been married?

A. Since 1915; January 31, 1915.

Q. Have you a family?

A. I have two daughters.

Q. How long had you been living in Lincoln up to the 25th day of February, 1940?

A. I lived in Lincoln always; I was born in Lincoln.

Q. You were born and raised right in Lincoln, Placer County? A. Yes.

Q. You were connected with your husband in his business, doing business as the Chevrolet agency in Lincoln? A. Practically all the time.

Q. What particular line of duties did you have in connection with the business?

A. I kept the books.

Q. Did you go there every day?

A. Every day, but not necessarily regular hours

(Testimony of Mrs. Bessie K. Fereva.)

—well, I shouldn't say every day, but practically every day.

Q. There were some days you weren't there?

A. Some days, yes.

Q. You know Mr. Urquhart, do you not?

A. I know Mr. Urquhart very well, yes.

Q. Do you remember the time Mr. Fereva took on the insurance agency [170] for the General Accident?

A. I don't remember the exact time. I remember when he started to do business with him.

Q. That is what I had reference to. Can you tell the jury about when it was he started to do business with this particular company, the plaintiff?

A. Well, it is difficult for me to say just when. We have done business with them for a great many years, but in the course of our business we have had business transactions with so many insurance companies, and Mr. Urquhart has been visiting our garage for years.

Q. In connection with the plaintiff corporation did he visit your garage there and did you talk to him?

A. Yes.

Q. Did you have occasion to talk to him about insurance?

A. Yes. He gave us all our instructions regarding our insurance.

Q. How you were to do it?

A. Explained it, yes.

Q. Did you have occasion to talk to him about accidents and make reports of accidents?

(Testimony of Mrs. Bessie K. Fereva.)

A. We always told him; Mr. Urquhart visited our——

Mr. Scott: Just a moment. We object as incompetent, irrelevant and immaterial.

The Court: The objection is sustained.

Mr. Goldstein: Your Honor, it is the same question I asked Mr. Fereva along the same line, as to how accidents were reported to Mr. Urquhart.

The Court: The reporter will read the question.
(Question read.)

The Court: The Court will withdraw the ruling.

The Witness: Am I to answer this?

A. We made our reports to Mr. Urquhart, and he would explain to us how these reports were to be made.

Mr. Goldstein: Q. That was in connection with insurance [171] policies?

A. Well, in connection with all our insurance business; applications for policies, or reports to be made. We had no dealings directly with anyone except Mr. Urquhart.

Q. That is what I want to find out. First of all, did you have any dealings with Mr. Wentz, or Mr. Erlin, or anybody from the San Francisco office?

A. No.

Q. Now, in case of any accident arising involving some car that was insured either for your husband, Mr. Fereva, or any of your clients, how would that report be made, Mrs. Fereva?

A. We reported it to Mr. Urquhart when he

(Testimony of Mrs. Bessie K. Fereva.)

came into the office, and if he didn't come in within a reasonable time we would phone him about it.

Q. Did you ever send a written report?

A. Not to my knowledge. It wasn't necessary.

Q. Did you, yourself, do that as the agent for the company?

A. Sometimes I would phone; sometimes Mr. Fereva phoned. Usually they were reported to Mr. Urquhart in the office.

Q. Did you ever have occasion to report them, whether by phone or in the office?

A. Yes, I reported them.

Q. Do you know of your own knowledge that your husband had a number of claims for both public liability and property damage prior to the 25th day of February, 1940, while he was an agent for this company?

A. Yes, he had some.

Q. Can you tell the jury how many of these claims came up within a period of five years, let us say, from 1935 to February, 1940?

A. Well, it is difficult for me to say just how many, but I would say four or five I can remember. I remember we had two involving demonstrators, that I can remember just offhand, and one involving a used car, and also our mechanic—we placed insurance for our mechanic, who had a car that was in a wreck. [172]

Q. Those you remember personally?

A. I remember those, and could place them definitely.

Q. Did you report those to Mr. Urquhart, then?

(Testimony of Mrs. Bessie K. Fereva.)

A. I couldn't say that I reported them, or Mr. Fereva reported them. [173]

MRS. BESSIE K. FEREEVA,

resumed.

Direct Examination

(Resumed)

By Mr. Goldstein:

Q. Mrs. Fereva, I believe just before the noon recess I was asking you about the manner in which you, as the bookkeeper and assistant to your husband in his business, reported any accidents or losses in connection with policies issued to your husband or to his customers. How were those reported?

A. They were reported to Mr. Urquhart either when he was in the office or phoned to him.

Q. And on these occasions do you know what happened after the report of an accident took place?

A. Well, Mr. Urquhart took care of it from the time we reported it to him. We had nothing to do with that, as far as the report is concerned.

Q. Did someone come up there to investigate the accident?

Mr. Scott: Objected to as leading and suggestive.

The Court: The objection is overruled.

A. After an accident was reported, yes, Mr. Henretty, on several occasions, came up there.

Mr. Goldstein: Q. I was just going to ask you that. You know Mr. Henretty, do you not?

(Testimony of Mrs. Bessie K. Fereva.)

A. Yes; he was in the office several times.

Q. In what connection did he come to your office or establishment in Lincoln?

A. Investigating these claims. [174]

Q. And were those the claims that were reported either by you or your husband verbally to Mr. Urquhart?

A. Yes.

Q. Did you ever make any report to Wentz & Erlin in San Francisco?

A. No.

Q. Did you ever send any written report to Mr. Urquhart, or anybody, about any accident?

A. The reports, as far as I remember, were all orally to Mr. Urquhart, either personally or by telephone.

Q. I direct your attention, Mrs. Fereva, to a time shortly after the 25th day of February, 1940. I refer now to the accident which occurred with the tow car that Sunday morning. You remember that?

A. Yes.

Q. Shortly after that, Mrs. Fereva, will you please tell the jury whether or not you did anything in connection with making any report to Mr. Urquhart by phone?

A. I didn't make a report by phone——

Q. Pardon me. What did you do, Mrs. Fereva, following that accident on February 25, 1940?

A. Well, some time——

Mr. Scott: Just a moment. Objected to as incompetent, irrelevant and immaterial,——

Mr. Goldstein: I submit the question.

(Testimony of Mrs. Bessie K. Fereva.)

Mr. Scott: ———unless there is some communication to the plaintiff company.

Mr. Goldstein: Will you read the question, Mr. Reporter?

(Question read.)

Mr. Goldstein: Q. In connection with making any phone call to Mr. Urquhart, or report to him?

The Court: You may add that.

Mr. Scott: She testified she didn't, your Honor.

Mr. Goldstein: Your Honor, that is just exactly what I want to show. [175]

The Court: Proceed.

Mr. Goldstein: Q. Will you answer the question, Mrs. Fereva?

A. I couldn't say the exact time; within a week or thereabouts I asked Mr. Fereva if I should phone——

Mr. Scott: Just a moment——

Mr. Goldstein: Just a moment. If the Court pleases, I am going to make this statement to your Honor: that this evidence is competent for two reasons: First of all, it is an admission against interest; and second, the person who made this statement was an agent of the company. Mr. Fereva, at the time of this conversation and one further conversation which I will offer in evidence, was, as shown by the record, a licensed agent of this corporation, and as far as third persons are concerned, his statements or admissions against the company, whether made to his wife or someone else, is immaterial. I en-

(Testimony of Mrs. Bessie K. Fereva.)

deavored this morning to bring this out when I tried to show by Mr. Fereva as to whether or not Mrs. Fereva reported the accident, and Mr. Scott objected and your Honor sustained the objection, and rightly so, because he can't testify to it, he being an agent of the company, but I want to prove it by others as bearing on whether or not he did give notice, and what he said about it.

Mr. Scott: May I respectfully suggest, if your Honor pleases, Mr. Fereva unquestionably is, or was, a soliciting agent of the plaintiff. However, that simply doubles the obligation that Mr. Fereva owed to the company. As an agent—dealing simply with that phase of the case—there was due from him to the company the very highest good faith and loyalty, and the imparting of information immediately. As an assured, under his contract there was also the duty of giving the company a notice. Now, it cannot be said that something that he said to his wife, or that he might [176] have said to some third party, or some stranger, not in the course of doing any business for the company, would be an admission against the plaintiff, and would be chargeable to the plaintiff, and would be anything else than pure hearsay. That is the reason I object to it.

(Argument.)

The Court: The objection is overruled.

Mr. Goldstein: Q. Can you remember the question, Mrs. Fereva? A. I think I do.

Q. Will you please answer it?

(Testimony of Mrs. Bessie K. Fereva.)

A. When I asked him if I should phone to Mr. Urquhart, or we should phone to Mr. Urquhart and report the accident, I will use his own words: He said, "Bob was in the other day"—"Bob" meaning Mr. Urquhart—"and I reported it to him when he was here."

Mr. Scott: I move the answer be stricken out on the grounds it is incompetent, irrelevant and immaterial; and also assign the asking of the question as misconduct on the part of counsel.

The Court: Overruled.

Mr. Goldstein: Q. Mrs. Fereva, is that the reason you didn't phone in this specific accident that occurred on February 25, 1940, to Mr. Urquhart?

Mr. Scott: I make the same objection.

A. Absolutely.

The Court: Overruled.

Mr. Goldstein: Q. What was the answer?

A. Absolutely.

Mr. Goldstein: You may take the witness.

Cross Examination

By Mr. Scott:

Q. Mrs. Fereva, in response to questions that have been asked you, you stated that in years past it was your [177] husband's habit to communicate with Mr. Urquhart if something happened?

A. Yes.

Q. By the way, some years before he became connected with the General Accident, Mr. Fereva was in the insurance business and associated with Mr. Urquhart?

A. Yes, sir.

(Testimony of Mrs. Bessie K. Fereva.)

Q. At that time Mr. Urquhart was the agent of other companies; correct? A. Yes.

Q. Now then, following that practice, you remember, do you not, that practically immediately upon communication of this information to Mr. Urquhart, Mr. Henretty would be there attending to the matter? A. I can't say immediately.

Q. Well, within a day, or two days?

A. He would come eventually to——

Q. Now, eventually. Isn't it a matter of fact that Mr. Henretty would be there on the job right away, within a day or two?

A. I can't say within a day or two. I couldn't say exactly how soon he would come there. He came at different times. I can't say exactly how soon after the report.

Q. Well, in the matters you were interested in, it is true, is it not, that Mr. Henretty would be there, say, within three, four, or five days at the very outside?

A. Well, I can't answer that definitely yes, Mr. Scott.

Q. Isn't that very close to it?

A. He would come and take care of them, but I couldn't say exactly how soon.

Q. He came very promptly; isn't that true?

A. Well, I can't say yes to that, because I couldn't say just exactly how soon he did come.

Q. Put it in your own words. How soon was it?

A. Well, after we reported them he would come

(Testimony of Mrs. Bessie K. Fereva.)

in the course of, I suppose—it is difficult for me to say just how soon—— [178]

Q. Mrs. Fereva, I don't propose to try to pin you down, but you did have, you say, three or four instances that you remember, in which you were interested, at the least, which matters were reported to Mr. Urquhart and were attended to by Mr. Henretty. A. Yes.

Q. Now, that was the setup, wasn't it? In other words, from your observation Mr. Urquhart wasn't the man who investigated and adjusted the claim, but Mr. Henretty?

A. It was reported to Mr. Urquhart and someone else—Mr. Henretty, as I remember, each time.

Q. And that procedure was followed in every case in which you and your husband were interested?

A. I think—as I remember, I think Mr. Henretty investigated them.

Q. Or it might have been Mr. Bell, or Mr. Gordon, or someone else, but at any rate it was attended to, was it not? A. Yes.

Q. And that was done—now, let us put it in your own words—that was done in how many days, roughly?

A. I couldn't say how many days, because after we reported it, it was out of our hands. We had done what we were supposed to do, and Mr. Henretty would come to the office and contact Mr. Fereva, and maybe go out and contact witnesses.

(Testimony of Mrs. Bessie K. Fereva.)

I wasn't there all the time. I just worked part days.

Q. And that was done, let us say, within ten days?

A. I don't like to say the number of days.

Q. Well, it was roughly seven or eight days?

A. I don't like to say the number of days.

Q. Put in in your own figures, your own recollection.

A. I can't remember back to the number of days and say how many days.

Q. Let us assume within seven days after this accident your [179] husband said to you he had told Mr. Urquhart about it; let's assume that to be a fact: You know, as a matter of fact, there was never anything heard from Urquhart, Henretty, or anybody representing the company, until 60 days after, when summons and complaint came in, and you telephoned to Mr. Urquhart? That is true, is it not?

A. I don't know; I couldn't say positive that I telephone, or Mr. Fereva telephoned.

Q. Now, you have known Mr. Urquhart for 15 or 16 years, or so? A. Very well.

Q. Been a guest at your house? A. Yes.

Q. And you would characterize him as quite an intimate friend? A. Yes.

Q. Now, isn't it true that the remainder of the whole 60 days elapsed, and the summons and complaint came into your hands without having heard

(Testimony of Mrs. Bessie K. Fereva.)

anything further of an accident in which three people were injured, isn't that true? A. Yes.

Q. You didn't have anybody come and even ask you any questions as to who were hurt? That is true, isn't it? In other words, there was a total silence there until April 26th? That is correct?

A. As far as I know.

Q. And on April 26th you took the telephone and notified Mr. Urquhart that you had a summons and complaint, and arranged to have your husband come down to San Francisco to Mr. Urquhart's office? A. Sacramento.

Q. Pardon me; I mean down to Sacramento. Isn't that true?

A. I don't remember who talked to Mr. Urquhart; whether Mr. Fereva talked to him or I talked to him.

Q. Did it ever occur to you to wonder why about two months had gone by, and three injured people, your own tow car injured, another automobile injured, and there was this continual silence? [180] Did that ever occur to you?

A. No, it didn't, Mr. Scott.

Q. It never occurred to you to speculate on it?

A. No, I didn't think it was anything to take care of; I thought the company was taking care of it.

Mr. Scott: Will you read the answer?

(Answer read.)

Mr. Scott: Q. By the way, you were living

(Testimony of Mrs. Bessie K. Fereva.)

continuously at home with your husband, were you not? A. Yes, sir.

Q. And in his place of business every day?

A. Practically every day. As I say, I didn't go to the office regularly.

Q. Now then, this intimate friend of yours, Mr. Urquhart, came through Lincoln, as counsel said, about twice a month? A. Yes.

Q. So in two months he made four visits?

A. Possibly, yes.

Q. And you saw Mr. Urquhart during those visits? A. Yes.

Q. And yet you never thought to mention to Mr. Urquhart that here was an accident involving three injured people? You never thought of mentioning it, did you?

A. No, I don't remember of mentioning it.

Q. You never even asked Mr. Urquhart whether it had been found out whether or not Dickinson or his wife were in the hospital, or whether Kemp was in the hospital?

A. As I remember, Mr. Scott, at one time prior to that when we had an accident, it was reported, it was just taken out of our hands and settled, and we didn't know anything about the settlement for——

Q. Now, I am asking you—that wasn't a personal injury accident involving your husband's car, was it?

A. It involved one of our used cars, as I remember.

(Testimony of Mrs. Bessie K. Fereva.)

Q. But your husband wasn't driving?

A. No; it was a prospective customer who had been driving.

Q. Now then, coming back to the question again: Let's assume Mr. [181] Urquhart made four visits, and on each occasion you saw him; it is true, is it not, that, as intimate as your friendship was, you never even whispered to him about this outstanding mess or claim, is that true?

A. No, it wasn't discussed.

Q. Not discussed at all? A. No.

Q. And you would have us then believe that your husband told you, some seven days after the accident, that he had spoken to Mr. Urquhart?

A. Yes, he did.

Q. And that thereafter you just dismissed the matter from your mind? Is that what you would have us believe?

A. Well, no; we had a business. We had a great many things on our minds. Our business was primarily car sales, and a garage business.

Q. Yes; in connection with that business. Let me ask you this question—I don't know what the facts are, but is it, or is it not a fact that during these 30 days your husband brought suit against the Dickinsons?

Mr. Goldstein: I didn't get that question.

Mr. Scott: Will you read the question, Mr. Reporter?

(Question read.)

A. There was no suit. There was a citation, a

(Testimony of Mrs. Bessie K. Fereva.)

traffic citation, or something of the kind. It wasn't a suit.

Mr. Scott: Q. Issued against the Dickinsons?

A. Well, I am not positive just as to that. It was something handled locally through the traffic officers.

Q. And isn't it true that during this time your husband discussed with you his contention that he was going to try to hold Mr. and Mrs. Dickinson responsible for the damage to his tow car?

A. I don't think so.

Q. You don't recall that being discussed, is that correct?

A. No, I don't remember that we discussed that.

[182]

Q. Now, coming down to the day when the summons and complaint were served, were they served at your husband's place of business upon him?

A. I think they came in the mail, didn't they?

Q. You mean that the summons and complaint were served in the mails upon you?

A. I am not positive about that. These papers, these legal papers that came?

Q. Yes.

A. I was under the impression they were mailed to us.

Q. The papers that were served, those that caused Mr. Fereva to come down to Mr. Urquhart's office, those papers were served personally, were they not, in his place of business in Lincoln?

A. I think they must have been served when I wasn't there, probably.

(Testimony of Mrs. Bessie K. Fereva.)

Q. Now, were you there when the appointment was made with Mr. Urquhart?

A. Over the phone?

Q. Yes.

A. Yes, I think I was there at the time the appointment was made. I am still under the impression these papers came through the mail.

Q. Now then, do you remember whether or not on that occasion you were at all surprised, alarmed, or concerned by the fact your husband was being sued for some \$10,000?

A. I thought that was being taken care of by the insurance company.

Mr. Scott: Will you read the question, Mr. Reporter?

(Question read.)

Mr. Scott: Q. Will you answer that question?

Mr. Goldstein: She has answered it.

Will you read the answer, Mr. Reporter?

(Answer read.)

Mr. Scott: It isn't responsive.

Mr. Goldstein: I submit it is responsive. It calls for a conclusion, it calls for a statement, and I submit it is an answer.

Mr. Scott: I move the answer go out as not responsive. I [183] ask the question be read again.

The Court: I think it is an answer. It is an answer, but not responsive. It may go out.

Mr. Scott: Q. Will you kindly listen to the question and answer the question directly?

(Question read.)

(Testimony of Mrs. Bessie K. Fereva.)

The Court: You can answer that yes or no, were you alarmed or not?

A. Well, no.

Mr. Scott: I see.

Mr. Goldstein: Did you want to explain your answer?

The Witness: Could I?

Mr. Goldstein: She has a right to explain that answer.

Mr. Scott: Sure; go right ahead.

The Witness: I can only answer as I did; I thought the insurance company was taking care of it.

Mr. Scott: Q. Yes. And you knew, did you not, that Mr. Campbell, who was working there in your place of business for your husband, was also there at the scene of the accident when it happened? You knew that, didn't you? A. Yes.

Q. You knew that Mr. Campbell and your husband had taken one or more of the people to the hospital, or the doctor's?

A. I knew it in a general way. This accident happened early in the morning, before I went to the office.

Q. But you knew that from what you heard?

A. Yes.

Q. And you also knew, did you not, that during these 60 days nobody had even come to your place of business to ask your husband or Mr. Campbell what had happened?

A. No. I didn't know. I couldn't answer that,

(Testimony of Mrs. Bessie K. Fereva.)

because I wouldn't know who would talk to my husband or Mr. Campbell. I couldn't answer that.

[184]

Q. Well, let me put it this way: Did it, in that interval of 60 days, strike you as being at all odd that with the most important accident in which your husband had ever been involved, not even a word had been heard from the company?

A. No, Mr. Scott. I didn't know how long—I hadn't had experience with such things. I didn't know how long such things took.

Q. Now, just a moment. You have been married, you say, since 1915? A. Yes.

Q. And I hope happily. And during all that time your husband has been an insurance man?

A. Yes.

Q. And during that time for the plaintiff company, and for the Western, and the Continental, and the Merchants, and Potomac, and others, he had placed more or less insurance before? Correct, is it? A. Yes.

Q. And during that time you say that on at least two or three occasions where more or less minor accidents had happened involving your husband's own car, the matter had been handled with promptitude by the company, adjusted and settled and out of the way, isn't that correct?

A. Yes.

Q. This accident in which three people were injured was the most serious one your husband ever had in his life, wasn't it?

(Testimony of Mrs. Bessie K. Fereva.)

A. Well, it turned out to be.

Q. Well now, in this case do you mean to say that it never even entered your mind to wonder why, if Mr. Urquhart had been told seven days after the accident, no further word had ever come to you or your husband during all this period of time?

A. Well, the thought had been, Mr. Scott, that after it was reported to the insurance company, that they were taking care of it.

Q. I see. And it fitted into the picture. All right. [185]

A. Well, I had absolute confidence that they were taking care of it.

Q. Well, now, coming back again to the day your husband came in to Mr. Urquharts office with the summons and complaint, have you now any recollection as to whether you arranged that appointment with Mr. Urquhart?

A. I couldn't say positively whether I did the phoning, or Mr. Fereva did the phoning. I may have put in the call, and he talked; I couldn't say definitely.

Q. You have no memory on it?

A. I wouldn't say positively. I may be wrong.

Q. Just to refresh your recollection, do you remember whether you told your friend, Mr. Urquhart, that the summons and complaint had been served, and that you had been trying to get your husband to report the accident, and he said he wasn't to blame; wasn't going to report it?

(Testimony of Mrs. Bessie K. Fereva.)

Mr. Goldstein: I didn't hear the question. May I have the question read?

(Question read.)

A. I have no recollection, no, Mr. Scott.

Mr. Scott: Q. Can you tell us now, looking back at that time, whether you did or did not communicate such a message to Mr. Urquhart?

A. I didn't communicate such a message to Mr. Urquhart.

Q. You are sure of that?

A. Positive I did not.

Mr. Scott: That is all.

Mr. Goldstein: I have no further questions. Step down.

Mr. Dickinson, take the stand, please.

CHARLES GROMER DICKINSON,

called for the Defendants; Sworn. [186]

The Clerk: Q. Please state your full name to the Court and jury.

A. Charles Gromer Dickinson.

Direct Examination

Mr. Goldstein: Q. Please speak up so the ladies and gentlemen of the jury can hear you. Your full name is Charles Gromer Dickinson?

A. Yes, sir.

Q. Where do you reside at the present time?

A. In Big Bend, California.

(Testimony of Charles Gromer Dickinson.)

Q. What county is that in?

A. It is in Shasta County.

Q. Are you married? A. Yes, sir.

Q. Doris May Dickinson is your wife?

A. Yes, sir.

Q. Was she the one who was injured in this auto accident? A. Yes, sir.

Q. Where is she now, at home?

A. At home.

Q. Unable to be in court, is she?

A. Yes, she is.

Mr. Scott: I object to that——

Mr. Goldstein: I have a right to show why a party isn't in court——

Mr. Scott: The pleadings admit that this gentleman and his wife have a judgment that is——

Mr. Goldstein: That is not the purport of our testimony——

Mr. Scott: The pleadings admit the making and entry of this judgment, and it is outstanding and unpaid. Now then, what further is there to which this man can testify? I object to it as irrelevant.

(Argument.)

The Court: The objection is overruled.

Mr. Goldstein: Q. She is unable to be here because of illness, is that correct? A. Yes, sir.

Q. Mr. Dickinson, have you received any part or portion of this [187] judgment that you obtained in the Superior Court of Placer County?

A. I have not.

(Testimony of Charles Gromer Dickinson.)

Q. I want to ask you, Mr. Dickinson, whether or not you went to see Mr. L. K. Fereva, the gentleman who sits there, and the man whom you sued, at his place of business shortly after the 25th day of February, 1940? A. I did.

Q. Will you please just face the jury a minute, Mr. Dickinson? About when did you go to see Mr. Fereva at his place of business in Lincoln, Placer County?

A. I went down there sometime between five and twelve days after the accident.

Q. What did you have in Mr. Fereva's garage that caused you to go down there?

A. I had my car.

Q. Had the car been wrecked in the accident?

A. Yes, sir.

Q. When you went down to get the car, as you told the jury, in the period of between five and twelve days after the 25th day of February, 1940, did you have a conversation with Mr. Fereva?

A. Yes, sir.

Q. Did you have a conversation with him regarding this accident? A. I did.

Q. Will you please state what the conversation was?

Mr. Scott: Objected to as incompetent, irrelevant and immaterial; purely hearsay.

Mr. Goldstein: I submit the question, your Honor, bearing upon the question of notice and statements made by the Defendant Fereva.

The Court: The objection is overruled.

(Testimony of Charles Gromer Dickinson.)

Mr. Goldstein: Q. You may state to the jury what the conversation was.

A. Well, I went down to see Mr. Fereva. I told him my wife was very seriously injured, and asked him what he was going to do about it. He told me that the insurance company [188] had my car tied up there, and was taking care of it, and everything was going to be taken care of.

Mr. Scott: I ask the whole answer go out.

Mr. Goldstein: Submit the motion.

The Court: Q. Are you stating the conversation you had with Mr. Fereva? A. Yes, sir.

The Court: The objection is overruled.

Mr. Goldstein: You may take the witness.

Mr. Scott: No questions.

Mr. Goldstein: Your Honor, I desire to call back Mr. Urquhart now, just for a few questions, under 2055.

R. F. URQUHART,

Recalled for the Defendants under Sec. 2055 C.C.P.; previously sworn.

Direct Examination

Mr. Goldstein: Q. Mr. Urquhart, were you in Lincoln, Placer County, sometime around March 1, 2, or 3, of 1940, last year? A. I was what?

Q. Were you in Lincoln, Placer County, sometime around the 1st, second, or 3rd of March 1940, last year? A. In Placer County?

(Testimony of R. F. Urquhart.)

Q. Lincoln. Were you in Lincoln around the 1st, 2nd, or 3rd of March of last year?

A. I couldn't say that I was or I was not, because I really don't know.

Q. You wouldn't deny that you may have been there, would you?

A. I wouldn't deny that I was, or I was not.

Q. But if you had been in Lincoln you would have seen Mr. Fereva, would you not, on those days?

A. No; there are times when I wouldn't—

Mr. Scott: Objected to as speculative. [189]

The Court: Yes, it is. Reframe the question.

Mr. Goldstein: Q. Can you tell the jury whether or not you saw Mr. Fereva at his place of business in Lincoln sometime the first week of March, last year?

A. I couldn't definitely say, because there are times when I didn't stop there.

Q. You might have been there?

A. I might have, or I might not.

Q. Now, you told the jury that Mr. Fereva made no report to you about the accident. Are you sure about that?

A. I am positive it wasn't told me until he came to my office.

Q. Do you remember having a conversation with Mr. Fereva in your office in Sacramento on Friday, December 5, 1941?

A. Friday, December 5, 1941?

(Testimony of R. F. Urquhart.)

Q. 1941; around noon time.

A. This is the 26th. Mr. Fereva was in the office some day this month, yes.

Q. Do you remember what conversation you had with him at that time?

A. As I recall, he came in about this case. [190]

Q. I will ask you if at that time you and he were present in your office around noon time in the Ochsner Building here in Sacramento, 719 K Street?

A. That is right.

Q. And nobody else was there, is that right?

A. That is right.

Q. Just the two of you?

A. Just the two of us.

Q. I will ask you whether, at that time and place, he asked you for the records of the insurance policies which he had placed in this plaintiff corporation, the General Accident company, and you told him they were all in San Francisco; you couldn't give them to him?

A. That is right.

Q. And I will ask you if, at that time and place, he didn't ask you if you didn't remember that he reported the Dickinson accident to you a few days after it occurred, and you said, "No, I don't remember; I have no recollection of it"? That is correct, is it?

A. Yes.

Q. Didn't Mr. Fereva, at that same time and place, say to you, "You must remember, because I told you about it," and you said, "No, I don't remember it"? Do you recollect that?

A. Yes.

(Testimony of R. F. Urquhart.)

Q. And then didn't you say, "Anyway, I couldn't testify to that, because it would mean my job"? A. I don't remember saying that, no.

Q. Will you swear positively, before this jury, that you didn't make that statement?

A. Will you repeat that last statement before I swear?

Q. Did you make the last statement to Mr. Fer-eva, "Anyway, I couldn't testify to that, because it would mean my job"?

A. No, I don't remember making that statement at all.

Q. You wouldn't say you didn't make that statement? A. I certainly did not.

Q. You did not? A. I did not. [191]

Mr. Goldstein: There is just one matter—may I be permitted to go back—I overlooked asking this witness in the nature of further proof on the agency, whether he reported all other accidents to Wentz & Erlin, so may I be permitted to ask that?

Q. Mr. Urquhart, you were also, during the times I asked you about this morning, let us say from 1934 to 1940, and at the present time, the district representative of the Mercantile Insurance Company of America? A. I am.

Q. I mean Wentz & Erlin were?

A. Wentz & Erlin were.

Q. But you were the district representative here? A. No, sir; only for Wentz & Erlin.

Q. That is what I asked you, only for Wentz

(Testimony of R. F. Urquhart.)

& Erlin, that is correct. Also, the name applies to the Potomac Company?

Mr. Scott: Just a moment. I object. The witness has testified that he isn't the representative of the company, but was the representative of Wentz & Erlin.

Mr. Goldstein. That is all I am asking.

Mr. Scott: That is not the phraseology of his question.

Mr. Goldstein: I beg your pardon, Mr. Scott; perhaps I was deficient in expressing what I had in mind.

Mr. Scott: Suppose you reframe the question.

Mr. Goldstein: I will reframe the question.

Q. Were you the district representative of these companies that I am going to ask you about, for Wentz & Erlin here in Sacramento, and having charge of the Northern California territory——

A. I can't say——

Q. Were you employed by Wentz & Erlin?

A. Yes, sir.

Q. Did that include these companies: Mercantile Insurance Company of America?

A. The underwriters, yes. [192]

Q. All right. Potomac Insurance Company?

A. Right.

Q. The Scotch Underwriters of Caledonia?

A. I don't know anything about that.

Q. All right. U. S. Merchants and Shippers?

A. I believe that is right.

Q. How about the Seaboard Surety Company?

(Testimony of R. F. Urquhart.)

A. Yes.

Q. And the General Accident?

A. That is right.

Q. I will show you some policies issued to Mr. L. K. Fereva, five, in the Mercantile Insurance Company of America——

Mr. Scott: Just a moment. I object to this, if your Honor pleases, on the ground it is incompetent, irrelevant and immaterial. We have the policies, which alone concern the plaintiff; those of other corporations are simply different issues. The policies are in different forms; the contracts are not the same——

The Court: What is the purpose?

Mr. Goldstein: The purpose of this, if your Honor pleases, is to show ostensible authority and the direct connection of the agency with not only this company, but any other company in which the assured Fereva was the agent, and show that the policies were issued by Wentz & Erlin, and the same endorsements were placed on them and sent to Fereva.

Th Court: For that purpose it will be received.

Mr. Goldstein: For that purpose only.

Mr. Scott: If your Honor please, in order not to encumber the record and get away from the issue, all of these policies are policies having to do with property losses; they are not policies having to do with liability. They are all, as the evidence shows, with other companies where there is no claims department, whereas with us, we have a

(Testimony of R. F. Urquhart.)

claims department functioning entirely apart from the agencies. Now, we have the case squarely before the [193] Court relative to the General policies, but the minute we step outside of that and go into other companies and other policies we are likely to get into a mass of things that have nothing to do with the issue here.

The Court: As I understand, it has to do with the witness on the stand.

Mr. Goldstein: May I answer Mr. Scott?

Mr. Scott: I am sorry to encroach upon you. It is a fact that here there are two or three policies of the General in evidence with the label on. Now, what relevancy is there *is* there were other policies with other companies that had such a label?

Mr. Goldstein: If you Honor pleases, may I state this: Your Honor will recall the evidence of both Mr. and Mrs. Fereva that some of these losses reported to Mr. Urquhart included property damage. Now, the policies in evidence are public liability policies, and collision insurance. Now, these policies, your Honor, pertain to the losses they testified to regarding property damage of others. Now then, to show the causative connection between the witness and Wentz & Erlin, and show that he had authority to waive a condition precedent to liability, such as the waiving of notice, I am offering as exemplars policies accomplished by the same agency and the same attorneys-in-fact, but in a different company, and I am not

(Testimony of R. F. Urquhart.)

claiming this company has anything to do with the plaintiff corporation——

The Court: The objection is overruled.

Mr. Goldstein: I will offer these five policies, one dated December 30, 1938, two dated March 15, 1939, one dated August 1, 1939, and one dated August 1, 1940, all in the Mercantile Insurance Company, bearing the same endorsement, "In case of loss, removal, or any change, notify R. F. Urquhart, District [194] Representative, 719 K Street, Sacramento, California, Phone Capitol 7190."

(The five insurance policies referred to were marked Defendant's Exhibit P in evidence.)

[195]

LEON KARL FEREVA,

recalled by the Defendants; previously sworn.

Direct Examination

By Mr. Goldstein:

Q. On Friday, December 6, 1941—rather, I think the 5th, it was—. Was it the 5th? I may be wrong——

Mr. Scott: Well, whatever it was——

Mr. Goldstein: Q. December 6th, I believe it was—no, I have the wrong letter.

Mr. Scott: I think last time you had the 5th.

Mrs. Goldstein: I have it right here.

Q. December 5, on Friday, December 5, 1941, just a few days prior to the commencement of the trial of this case, did you see Mr. Urquhart

(Testimony of Leon Karl Fereva.)

at his office here in Sacramento, in the Ochsner Building, 719 K Street? A. I did.

Q. Did you have a conversation with him at that time pertaining to this accident, or the accident in question?

A. Pertaining to records of insurance policies.

Q. Did you at that time and place ask him, among other things—and I will just get to the last portion of this conversation—ask him if he did not remember that you reported to him the Dickinson accident a few days after it happened? Did you ask him that? A. Yes.

Q. Did he then reply, “No, I don’t remember; I have no recollection of it”; as that correct?

A. Similar to that, yes.

Q. Did you then say, “Bob, you must remember that, because I told it to you,” and he said, “No, I don’t remember it. Anyway, I couldn’t testify to that, because it would mean my job?”

A. Well, that is what Mr. Urquhart told me.

Q. Is it your positive testimony that he made the last statement to you, Mr. Fereva?

A. That is what I am here on the [196] stand for.

The Court: Q. What is the answer?

A. That is what I am here on the stand for.

The Court: Well, that is not an answer.

Mr. Goldstein: Q. Did he make that statement? A. Yes.

You may take the witness.

(Testimony of Leon Karl Fereva.)

Cross Examination

By Mr. Scott:

Q. Now, Mr. Fereva, early in the trial of this case you testified that on April 29, 1940, you received this plaintiff's exhibit, the original of Plaintiff's Exhibit No. 6, and signed the registry receipt for it? Correct, is it not? A. Yes.

Q. Now then, you also testified—that letter, Exhibit 6, you understand, is the letter calling your attention to the fact that the accident had occurred on February 25, and that no notice had been given to the company, and hence they were according you a defense with full reservation of rights? You understood that, did you not?

A. It was in writing there. [197]

Q. It was in writing? A. Yes.

Q. Now then, again, when the Kemp case came along, you received a similar letter, now Plaintiff's Exhibit No. 7, by registered mail, for which you receipted, is that not true?

A. Yes; I received several of them.

Q. Now then, again, on January 28th of this year, you received the notice, Plaintiff's Exhibit 8, by registered mail, did you not?

A. Yes, sir.

Q. You never made any reply whatever to the General Accident Fire and Life Assurance Company, to any one of these three letters, did you?

A. Not in writing, no.

Q. Never made any reply to the company whatever?

(Testimony of Leon Karl Fereva.)

A. Just through Mr. Urquhart, is all, not the company. I never corresponded with the company.

Q. You never made any reply to the registered letters that were sent you, did you.

A. So far as my knowledge, no.

Q. No. Now then, let me ask you something: Mr. Dickinson has just testified that, as I recall it, the first week in March he came to Lincoln, to your place of business, because his automobile was there, and he spoke to you, and you refused to let him have it on the ground that the insurance company was holding it?

A. No, that is wrong.

Q. That is not true, is it?

A. The insurance company—I believe it was tied up on account of traffic violations, or something.

Q. Now, as a matter of fact, Mr. Dickinson is entirely incorrect? You never told him that an insurance company was even remotely interested in his automobile, did you?

A. I don't believe I did.

Q. You never intimated to Mr. Dickinson that it was being held [198] under a stop order by an insurance carrier?

A. No; traffic violation, not insurance company.

Q. Yes. So that Mr. Dickinson is entirely incorrect in that?

Mr. Goldstein: Mr. Scott, be fair with the witness. Ask him what he told Mr. Dickinson, if you don't mind.

(Testimony of Leon Karl Fereva.)

Mr. Scott: Now, just a minute.

Q. Now, as a matter of fact, on the first Monday in March neither your automobile nor the Dickinson automobile was being held up in your garage by any insurance company whatever?

A. Not by the insurance company.

Q. Now, since sometime back in the early '30s you have been engaged in the insurance business along with your automobile business?

A. Yes, sir.

Q. Isn't that true? A. Yes, sir.

Q. Now, in connection with your automobile business you have a garage and repair shop, haven't you? A. Yes, sir.

Q. Now, it is true, is it not, that most of these vehicles that go up and down our highways are covered by collision and property damage policies——

Mr. Goldstein: Don't answer that, Mr. Fereva.

If the Court please, I object to that. That is not so. In this case neither one of these cars were covered by property damage insurance. That disproves the statement in the question. Mr. Dickinson did not have any insurance on the automobile; neither did Mr. Fereva. It is not a fact that most——

Mr. Scott: Just a moment. I have an object in asking the question, which will appear shortly. I don't like to disclose it in advance when I have a witness on examination.

The Court: Proceed.

(Testimony of Leon Karl Fereva.)

Mr. Scott: Will you read the question, Mr. Reporter? [199]

(Question read.)

A. I wouldn't say that; not more than 50 percent.

Mr. Scott: Q. All right. Let us get the 50 percent. In the course of your repair business, is it not true that a very large amount of your income was derived from payments by insurance carriers for damage done to this and that and the other car? A. A portion of it was.

Q. Yes. That portion of your business was fairly substantial, wasn't it? A. Yes, sir.

Q. In other words, when a car or two were damaged in a collision, it was quite usual for you—particularly if the accident happened within the reach of your towing activities—to have the repair job, and have the same paid for by one or another insurance company? A. That is correct.

Q. Now then, one of the most essential elements in that was this, was it not: that where the car was covered by insurance, or, where insurance was involved, you would first have an inspection of the car to ascertain the extent of the damage?

A. Yes, sir.

Q. In other words, insurance companies were unwilling to go and blindly authorize any repair until they had made an inspection, as it is called? True, is it not? A. Yes, sir.

Q. And you, as an insurance man, and as a repair and garage man, have for many years been

(Testimony of Leon Karl Fereva.)

accustomed to that phase of the insurance business?

A. Yes, sir; there are estimates made on them.

Q. And in this case the Dickinson car, if injured by reason of your negligence, you knew, as an insurance man, perfectly well, came under the damage features of your policy, isn't that true?

A. Yes.

Q. So that the nature and extent of the injury to the automobile itself was, to your knowledge as a repairer and insurance man, [200] something that it was highly important to have the insurance carrier check to ascertain how far, if at all, it was liable for that damage. True, isn't it?

A. True.

Q. In fact, that is elemental, is it not?

A. I beg your pardon?

Q. We might say that is elemental in your business, isn't it? A. Yes.

Q. All right. Now then, you knew in this case that the Dickinson car—possibly others, I don't know—the Dickinson car was injured in an automobile accident in which your tow car was involved, and that your tow car was covered \$5,000 for property? A. Sure.

Q. You knew all that. And yet, might I ask you for how long a time did you let that Dickinson car remain in your garage without it being checked up by any representative of your insurance carrier? A. I couldn't say on that, Mr. Scott.

Q. Let us put it this way: How long did the

(Testimony of Leon Karl Fereva.)

Dickinson car stay in your garage after you towed it there? A. Probably ten or twelve days.

Q. Ten or twelve days. And during that ten or twelve days you say you had started a conversation with Mr. Urquhart, is that correct?

A. Yes, sir.

Q. And the conversation had been broken off?

A. Yes, sir.

Q. And you never thought to complete it?

A. I never had the chance. In other words, Mr. Urquhart wasn't in, and I went no further with it.

Q. Counsel just called attention to the fact there is, in the telephone book here in Sacramento, Mr. Urquhart's name, as with Wentz & Erlin. You knew that, didn't you? A. Surely.

Q. During all of these many years when you and Mr. Urquhart had [201] been connected in the insurance business, you never had any difficulty in communicating with him, had you?

A. Not a bit.

Q. And yet you never called him up, and in the remaining 60 days you never again brought to his attention anything whatever regarding the accident?

A. I don't believe I saw Mr. Urquhart in that time. He was in my place several times; he was in the habit of leaving a note when he came in. He had been in and out several times.

Q. You don't remember even seeing him in that 60 days? A. No.

(Testimony of Leon Karl Fereva.)

Q. Assuming that the Dickinson car remained in your garage for a period of ten days, as you say or estimated, and during that time you never even told Mr. Urquhart that it was there in the garage, did you? A. I believe that is right.

Q. During that time you never interested yourself in seeing that your insurance carrier representative would inspect that car?

A. I believe that it right, too.

Q. And yet, over this interval of many years of your activity as a repair and insurance man, you knew that this was one of the elementals of the whole insurance business?

A. I had cars stay in my garage 10 days, 15 days, 30 days, and even 50 days, before an agent came in and checked it over.

Q. All right. Here is one that stayed 10 days, and yet you never drew anybody's attention to it at all, and allowed it to go away, is that right?

A. It was his car; yes.

Q. Yes. [202]

Mr. Scott: Q. You say that on December 5th you had a talk with Mr. Urquhart?

A. That is right.

Q. And at that time you suggested that you had said something to Mr. Urquhart not long after the accident? A. Yes, sir.

Q. Now, the accident happened in February, 1940—February 25th? A. That is right.

Q. This talk that you had with Mr. Urquhart was this December? A. That is right.

(Testimony of Leon Karl Fereva.)

Q. And that is the first time you took it up with Mr. Urquhart, isn't it?

A. Oh, no, no, Mr. Scott.

Q. And if Mr. Urquhart remembered, you said he told you, he would lose his job?

A. That is it.

Q. Didn't Mr. Urquhart tell you that if he lied about it he would lose his job? A. Oh, no.

Q. Didn't he tell you in substance that if he came here in court and told a story that wasn't true he would lose his position? A. Oh, no.

Q. In other words, this man, this friend of yours and your family, that you had known all these years, told you that he wouldn't come here, in substance, and tell the truth, because he might lose his job, is that right?

Mr. Goldstein: I object to that upon the ground that that is not the statement of the witness. The witness said what was said by Mr. Urquhart, and this is an entirely different thing.

Mr. Scott: I submit the record—— [203]

The Court: It is cross examination. Overruled.

The Witness: Repeat the question, Mr. Scott.

Mr. Scott: Will you read the question, Mr. Reporter?

(Question read.)

A. No, Mr. Urquhart told me that he didn't remember of my telling him that.

Mr. Scott: Q. Yes. Now, let me ask you this: When, on April—when on May 3, 1940, you received this Plaintiff's Exhibit 6, to which you made no

(Testimony of Leon Karl Fereva.)

reply, did you then call up Mr. Urquhart and say here in substance, "Mr. Urquhart, there is a lot of nonsense to this, because I told you within seven days after the accident happened"?

A. I was in to Mr. Urquhart's office and brought this down to him and turned it over to him, and this appears to be the same letter——

Q. Just a minute. That is my office copy You certainly didn't turn that over.

A. No. I said the writing appears to be the same.

Q. Did you go down to Mr. Urquhart's office on the day that you signed for this registered letter, namely, May 3, 1940, and tell him that that letter was a mistake, because you had already told Mr. Urquhart about this case, about these claims?

The Witness: Would you repeat that question?

Mr. Scott: Read the question, Mr. Reporter.

The Court: The reporter will read the question.

(Question read)

A. No, I didn't tell him it was a mistake.

Mr. Scott: Q. To. You had been a representative of some character or other of the General for over ten years, had you not? A. That is right.

Q. You had received from Wentz & Erlin commissions over all that [204] period of time?

A. Yes, sir.

Q. You never, however, took the telephone and called up Wentz & Erlin's office, or the claims department, or anybody else, and asserted that you had told Mr. Urquhart about this accident?

(Testimony of Leon Karl Fereva.)

A. No; that was in the course of business. It was never done.

Q. You never did it, did you? A. No.

Q. And you left this Plaintiff's Exhibit 6 unanswered, is that correct?

A. I wouldn't say unanswered. It probably was taken up with Mr. Urquhart.

Q. You don't remember that it was?

A. Not to my knowledge.

Q. As a matter of fact, the first time that you gave any intimation to the plaintiff, the General Accident Life Assurance Company, that you had had this talk with Mr. Urquhart, was when I took your deposition here in Sacramento on Saturday, May 10th of this year, isn't that true?

A. No, it is not. I talked to Mr. Urquhart many times before that.

Q. About this conversation?

A. About the conversation there? Only some of that; some of that conversation, yes, sir.

Q. Not about any notice that you gave Urquhart a week after this accident?

A. Oh, yes, Mr. Scott.

Q. Well, let me put it this way: How many times did you tell Mr. Urquhart that you had given a notice?

A. Why, once; I believe that is all. That is a few days after the accident.

Q. That was December 5th of this year, wasn't it?

A. No, that was away back in February or March.

(Testimony of Leon Karl Fereva.)

Q. In other words, the only time you ever talked to Mr. Urquhart on this subject was the time you had this talk outside of your garage, is that what you mean? A. After he visited my office.

Q. And the next time was in December of this year? [205]

A. When it was discussed I don't know

Q. The fact is, you don't remember that you ever discussed it with him?

A. Why, after the trial we discussed it.

Q. You never raised this point, did you, until after this letter saying Mr. Desmond was instructed to turn the papers back to you, and that you were to get other counsel, isn't that true? That is true, isn't it?

A. I talked to Mr. Urquhart before that? Why, yes——

Q. Now, just a minute. Let us see if you and I can find each other on some common meeting ground, Mr. Fereva, because, after all, that is our only object. Let's see once more if I can get the thing straight. You testified that about a week after the happening of the accident in front of your place you started to tell Mr. Urquhart about this and then were interrupted by customers and he went away. A. That is correct.

Q. All right. Then, as I gather, you testified also that you had another talk with Mr. Urquhart on December 5th of this year; that is this month.

A. Why, I had talked about that before. I went to his office when the papers were served; I brought

(Testimony of Leon Karl Fereva.)

them down. That was a month and a half afterwards.

Q. Yes. That is the time you went to Mr. Henretty's? A. Yes, that is right.

Q. All right. Now, aside from that occasion, the occasion following the accident, and the trip to Mr. Henretty's office, and the talk on December 5th of this year, did you, on any occasion, suggest to Mr. Urquhart that you had had such a conversation with him in front of your place of business?

A. I wouldn't answer that, because Mr. Urquhart had been in my office many times; we had talked about the trial, and I wouldn't want to answer yes or no on that. [206]

Q. Mr. Fereva, in fairness to you, let me put it another way: You were quite concerned, were you not, as an insurance man, over receiving this Plaintiff's Exhibit No. 6 on the 3rd day of May, 1940? A. I may have been, yes.

Q. Yes. You were, and remained for a long time thereafter, an agent doing business with Wentz & Erlin? A. Yes, sir.

Q. You were, and I presume still are, an intimate friend of Mr. Urquhart's?

A. I hope I am.

Q. And knew Mr. Henretty, and knew Mr. Henretty almost as long as Mr. Urquhart?

A. Not personally, no. I never knew Mr. Henretty personally.

Q. You knew him as the trouble man, investigating and all that? A. Yes, sir.

(Testimony of Leon Karl Fereva.)

Q. Now then, in spite of your close relationships with Urquhart and with the company, or with Wentz & Erlin, it never occurred to you, did it, to call the company's attention further, or Urquhart's attention, or the attention of Mr. Wentz, the attention of Mr. Henretty, or anybody else, to your alleged conversation had in front of your garage?

A. Not unless I talked it over with Mr. Urquhart in my place of business.

Q. You said you don't remember that.

A. I am not so sure, because we talked the case over many times.

Q. But you don't remember bringing that up until December 5th, when you came in to ask about producing some papers, and how he would testify in this case?

A. Yes, I believe I talked to Mr. Urquhart upon that before, and he gave practically the same questions he did here; he didn't remember me telling him.

Q. Now then, so we may have it clear, do you remember where you and Mr. Urquhart were on such occasion?

A. Why, probably in my office. [207]

Q. Do you remember any other person besides yourself and Mr. Urquhart, anyone in the world, who was present and heard such a talk?

A. I wouldn't say that, because there were many people in and out of the office.

Q. I am asking you if you can remember; if you can name anybody.

(Testimony of Leon Karl Fereva.)

A. No, I do not, Mr. Scott.

Q. This accident happened, didn't it, the original accident happened following a very stormy night in February? A. It was very stormy.

Q. And you had more than an abundant supply of rain? A. Yes, sir.

Q. And you had been called because of the conduct of some allegedly drunken driver, to go out and tow some car? A. That is correct.

Q. And you got out there at a very early hour, before the sun was up?

A. Well, just before daylight.

Q. And the accident happened while your tow line was attached to this unknown car, whoever it was? A. Yes, sir.

Mr. Goldstein: If your Honor please, I don't like to object and be overruled by the Court, but your Honor will recall that not a bit of this examination is in answer or cross examination of what I asked the witness. Not a bit of it. I don't want to object——

Mr. Scott: If your Honor pleases——

The Court: Mr. Goldstein has the floor now, Mr. Scott.

Mr. Goldstein: Mr. Scott is now going into matters regarding the accident, or what happened, and all of this is immaterial. There was an accident took place, and a trial was had on the issues involved in it, which resulted in a judgment, and it is a valid and binding judgment, and the company is bound by it. We [208] did not go into any-

(Testimony of Leon Karl Fereva.)

thing regarding the accident, and this is not cross examination at all. I dislike very much to be overruled by the Court, and that is why I have been standing here not making any objections——

The Court: The Court can only rule as the objections are made.

Mr. Goldstein: Yes. Your Honor has been very eminently fair and has allowed us to go into anything that might have a bearing on the case, but this has gone too far now, and I am going to object to any further questions along this line of testimony, on the ground that it is not proper cross examination, highly immaterial, and not connected with the case.

Mr. Scott: I think I can show your Honor in a question or two it is not only relevant, but very material, and is cross examination. I don't like to explain in advance to a witness what I am trying to develop.

The Court: Proceed.

Mr. Scott: Will you read the question, Mr. Reporter?

(The last question and answer were read by the reporter.)

Mr. Scott: Q. Now, at that moment in your activity, before you started towing, you had placed lights upon the highway?

A. Yes, sir.

Q. To warn oncoming traffic. Now then,——

The Court: I don't think Mr. Goldstein entered upon that examination——

(Testimony of Leon Karl Fereva.)

Mr. Scott: If your Honor pleases, he has——

The Court (continuing): ——with this witness today. He did before.

Mr. Scott: He did before, yes.

The Court: Did you cross examine the witness on that point [209] before?

Mr. Goldstein: If your Honor please, I never asked him a question about that today.

Mr. Scott: He asked this witness a line of questions tending to show that he had cooperated, he had gotten all the witnesses, that everything was hunky-dory, and it didn't make any difference, in substance, whether he gave this notice or not. That is what I am directing the cross examination to. I will not be very long, if your Honor will permit me to do it.

(Argument.)

The Court: Proceed.

Mr. Scott: Will you read the question, Mr. Reporter?

(Unfinished question read.)

Mr. Scott: Evidently all this argument was over nothing.

Q. As a matter of fact, these cars piled up on one side of the highway, the safety strip, or the shoulder?
A. That is right.

Q. As a matter of fact, there were a great many markings there on that muddy, rainy road, and the surroundings? There were a lot of footprints and markings?
A. Well, we were towing the car.

(Testimony of Leon Karl Fereva.)

Q. There were tire marks, weren't there?

A. Yes.

Q. And 60 days afterwards, the weather having recovered to normal, not one of those marks remained, did they?

A. Oh, yes, they did.

Q. But it was impossible to show by photograph how the cars had come together? True, was it?

A. That may be possible; the change of the seasons——

Q. Now, that is true; you waited 60 days from this rainy night?

A. Yes.

Q. Now, another thing: You went with Mr. Henretty, and you, [210] yourself, attended the taking of the statements of some witnesses?

A. Yes, sir.

Q. You remember, don't you, that because of the delay the witnesses expressed themselves as confused; some witnesses had your flares on one side of the road, some on the other?

A. They were on both sides.

Q. They were on both sides, they couldn't say which, isn't that true?

A. I would say not.

Q. Wasn't it true they explained, just as Officer La Porte explained, that had you come earlier they would have been very glad indeed to assist you, but because you were late they could not remember?

A. Why, Mr. La Porte was on the scene 20 or 25 minutes afterwards, and Mr. Smart was on the scene 10 or 15 minutes afterwards?

(Testimony of Leon Karl Fereva.)

Q. But Mr. La Porte, 60 days afterwards, said to you that he could not remember the setup there, and said he should have been spoken to before, isn't that true? A. No, sir, it is not.

Q. Now then, this tow car, what did you do with that after the accident?

A. Why, one of the garages in town towed it back to my place of business.

Q. Was that damaged? A. Yes, sir.

Q. Did you have it repaired? A. Yes.

Q. Where?

A. In my own place of business.

Q. When was it repaired?

A. It was five to twelve days, during the length of time it was being repaired.

Q. So that 12 days after the accident your own car was repaired, is that correct? A. Yes.

Q. And in the meantime, just as in the Dickinson car, you never called the attention of Mr. Henretty or Mr. Urquhart that you were repairing the evidentiary damage to your own car? [211]

A. Why, Mr. Henretty saw the Dickinson car. Presumably he saw my tow car.

Q. He certainly didn't see it 12 days after the accident. A. I wouldn't say so.

Q. He didn't see it until after the 60-day delay had occurred and you received your letter, Plaintiff's Exhibit 6? A. Yes.

Q. In other words, Henretty didn't see it until after you came to his office on April 25?

A. I think that is right.

(Testimony of Leon Karl Fereva.)

Q. So that had already been repaired and fixed up?

A. Yes. We were in a hurry to get it repaired.

Q. But it didn't occur to you to notify the company, did it?

A. You mean on the repair of my tow car?

Q. Yes.

A. No, I didn't notify them on that.

Mr. Scott: I think that is all.

Mr. Goldstein: Are you finished?

Mr. Scott: For the time being.

Redirect Examination

By Mr. Goldstein:

Q. Mr. Fereva, Mr. Scott asked you as to what conversation you had with Mr. Dickinson about a week after the accident, on February 25, 1940. Will you please state that conversation, the whole of it?

A. I think Mr. Dickinson——

Mr. Scott: Just a minute. Objected to as hearsay, irrelevant, immaterial and incompetent.

Mr. Goldstein: If the Court please, Mr. Scott asked for a part of the conversation, and I have the right, under the law, to bring out the entire conversation.

(Argument.)

Mr. Goldstein: I submit it.

The Court: The objection is overruled.

Mr. Goldstein: Q. Answer the question. [212]

The Witness: Repeat the question, Mr. Goldstein.

(Testimony of Leon Karl Fereva.)

Mr. Goldstein: Q. When Mr. Dickinson came in there some week or ten days, or thereabouts, after the 25th of February, 1940, he said he had a conversation with you? A. Yes, sir.

Q. What did he ask you at that time, and what did you say?

Mr. Scott: Same objection.

The Court: The objection is overruled.

A. He asked me what I intended to do with his car, and the doctor bills in Lincoln. I told him I had nothing to do with it; it was turned over to the insurance company. Those were practically the words I told Mr. Dickinson.

Mr. Goldstein: Q. You remember making that statement to him, do you?

A. I do.

Mr. Scott: Will you read the answer? The witness spoke so low I couldn't hear him.

(The answer referred to was read by the reporter.)

Mr. Goldstein: Q. Prior to the time that he came there, had you talked to Mr. Urquhart?

A. I had.

Q. So that the visit with Mr. Dickinson was subsequent——

A. It was after my conversation with Mr. Urquhart.

Q. Do you remember him mentioning anything about his wife? A. Mr. Dickinson?

Q. Yes.

(Testimony of Leon Kari Fereva.)

A. Our conversation was very brief. Mr. Dickinson's disposition wasn't very good when he was in the garage, and our conversation was very brief.

Q. But you do remember the portion of the conversation you just told the jury about?

A. I do.

Mr. Goldstein: That is all, your Honor.

Mr. Scott: No further questions.

Mr. Goldstein: Your Honor, I overlooked one matter. Just one [213] minute. I overlooked one question.

Q. Will you take the stand again, Mr. Fereva? Mr. Fereva, do you recall the day that the motion for a new trial was argued in the Superior Court of Placer County, namely, January 23, 1941, some five days before this letter was written to you by Mr. Desmond?

A. I wouldn't say, Mr. Goldstein; I can't place the date.

Q. Now, just a moment. Do you recall the day in January, 1940, when Burton Goldstein, my son, and myself, came from the Superior Court at Auburn, to Lincoln, in the afternoon, after hearing in the court in the case?

A. Yes, sir; it was just about dusk.

Q. Just about dusk. And I will ask you if you now recollect that the motion for a new trial was argued, when Mr. Desmond was there in court, Mr. Buton Goldstein, my son, and myself? Do you recall that? A. Yes.

Q. Did you on that occasion after dusk in the

(Testimony of Leon Karl Fereva.)

afternoon of January 23, 1941, and prior to the time this registered letter was mailed to you, dated January 28, 1941, state to my son and myself that conversation you had with Mr. Urquhart, and the report you gave of the accident?

Mr. Scott: Just a moment. I object to that as incompetent, irrelevant and immaterial, and hear-say.

Mr. Goldstein: I submit it is proper examination in connection with the testimony elicited by Mr. Scott in relation to the letter. I am not asking for the conversation; I am asking whether he made the statement. He was still the agent for the company.

The Court: Overruled.

Mr. Scott: If your Honor please, I apprehend that the fact that he was still the agent of the company does not give the assured of one of our policies the authority to make a statement that would be binding to one of the two other parties. I object [214] to it as incompetent, irrelevant and immaterial.

Mr. Goldstein: May I make the further statement very respectfully: It is very patent that the elicitation of the testimony by Mr. Scott was to the effect that the first time that this assured under the policy conceived the idea of making any statement in connection with his having notified orally Mr. Urquhart, the agent, was after this letter or repudiation was received by him under

(Testimony of Leon Karl Fereva.)

date of January 28, 1941. Now, to rehabilitate the matter, your Honor, I am asking whether he did not make that statement to my son and myself on the afternoon of January 23rd, immediately after the motion for a new trial was denied by Judge Landis of Placer County.

The Court: Proceed.

By Mr. Goldstein:

Q. Do you remember that?

A. Yes, I remember it.

Q. Did you at that time fully explain the circumstances of the notice you gave to Mr. Urquhart, and how you gave it to him?

Mr. Scott: Just a moment. Objected to as incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

A. I made it very brief, yes.

By Mr. Goldstein:

Q. Was it substantially the same thing that you testified to before this jury? A. Yes.

Mr. Scott: Same objection.

The Court: Same ruling.

Mr. Goldstein: That is all.

(Witness excused.) [215]

Mr. Goldstein: If your Honor pleases, Mr. William Kemp is one of the defendants in this action, and as your Honor is familiar from reading the pleadings, he is a named defendant because he has an action pending in the State Court arising out of the same accident. The attorney of record in this case representing Mr. Kemp is Mr. Erling

S. Norby, of Marysville. Mr. Norby was here the first day, and perhaps came in for a minute or two at other days. As a matter of personal courtesy, your Honor, I desire to protest the record as far as this defendant is concerned, although I am not his attorney, and at this time I would like to ask that every bit of evidence that was offered here in behalf of the Defendants Fereva and Dickinsons be applicable to Mr. Kemp, and he desires to have the Court let the record show that for the purposes of this trial, and for the purposes of protecting his interests, that I appear as associated counsel with Mr. Norby.

Is that you wish, Mr. Kemp?

Defendant Kemp: Yes.

Mr. Scott: If your Honor pleases, I am a little familiar with the circumstances, and I may say this: that with the same spirit of fairness I am willing to stipulate that all of the evidence introduced and received in the case be deemed to have the same force and effect with reference to the Defendent Kemp as it would have with reference to the Defendants Dickinsons or to the Defendant Fereva, subject, however, to my time-honored exceptions and objections which are in the record.

Mr. Goldstein: That you very much, Mr. Scott. The defendants rest, your Honor.

(Defendants rest) [216]

(Thereupon an adjournment was taken until monday, December 29, 1941, at 10:00 o'clock a. m.) [217]

Monday, December 29, 1941

Ten O'Clock A. M.

The Clerk: General Accident Health and Fire Assurance Corporation vs. Dickinson.

Mr. Scott: Ready.

Mr. Goldstein: Ready.

The Court: The Clerk will call the roll of jurors.
(Roll called.)

The Clerk: The jurors are all present, sir.

Mr. Scott: The plaintiff rests, your Honor.

Mr. Goldstein: The defendants rest, your Honor.

The Court: You may proceed with the argument.

(Mr. Scott made an opening argument to the jury on behalf of the plaintiff.)

The Court: Ladies and gentlemen of the jury, we will take the usual recess for fifteen minutes. Remember the admonition heretofore given you by the Court. You may now retire.

(Recess.)

(The following proceedings were had outside the presence and hearing of the jury:)

Mr. Goldstein: I just want to bring up a matter before the Court, Mr. Scott.

If your Honor pleases, I am rather surprised—a matter came to my attention after the address made by Mr. Scott which I think I should bring before the Court, and I desire to make a motion after I am through presenting the situation.

Your Honor will recall that in this case Mr.

Erling Norby represents Mr. William Kemp, who is the plaintiff in a personal injury suit pending in the Superior Court of Butte County. Very unfortunately Mr. Norby has at no time consulted with either Mr. [218] Hogle or myself in this case. We didn't have the benefit of anything he knew in the case, and it was just during this recess that I learned that Mr. Henretty, representing the plaintiff corporation, called upon Mr. Kemp in Yuba City within two or three weeks after this accident to take his statement and Mr. Kemp refused to talk to him and advised him that he had turned the case over to Mr. Norby and Mr. Norby had advised him not to give any statement unless it was taken at his office. At that conversation in Yuba City Mr. Kemp's wife was present and can corroborate it.

Now, if the Court pleases, I am quite surprised and taken back, and while I know it is somewhat unusual, I am going to move the Court to set aside the submission of the case and give me the opportunity of introducing this additional evidence, and in line with that I have no objection to Mr. Scott, if he desires, to have time to combat it, or that the Court take any steps the Court sees fit. But your Honor will recognize, this being a case involving both equity and law, that when a matter of that nature comes to the knowledge of counsel it is my absolute duty to bring it to the attention of the Court, because we are trying to get the facts.

The Court: Well, what point would that have in this case?

Mr. Goldstein: Mr. Henretty said he never knew anything about the accident and didn't go up there until sixty days later. It would be absolutely contrary to the testimony he gave in this court. That is how the matter came up, your Honor.

Mr. Scott: May I state this to your Honor, in all due respect to counsel, and, of course, it isn't meant as any reflection on him: I have very reason to believe that the statement conveyed to counsel is utterly untrue. I have been [219] with this case now almost since it first came up. I don't believe there is a scintilla of truth in that.

On the other hand, I wouldn't want to be in the position of refusing to entertain it if it be true. My judgment, after all, is not the judgment of this Court; but counsel must admit that any such statement as that coming now is at least a surprise to me, and I would decline to have the case reopened now unless you want to take a recess and come back again later. This business of ganging up that way——

The Court: Well, it is too late now. Motion denied. Call the jury.

(The jury returned into court.)

The Court: Will counsel stipulate that all the jurors are present and in their proper places?

Mr. Scott: Yes.

Mr. Seawell: Yes, your Honor.

The Court: You may proceed, Mr. Goldstein.

(Mr. Goldstein proceeded with his argument on behalf of the defendants.)

The Court: It is twelve o'clock. Ladies and gentlemen of the jury, we will now recess until half past one this afternoon. Will you please remember the admonition heretofore given you by the Court? You may now retire.

(Thereupon an adjournment was taken until 1:30 o'clock P. M. this date.) [220]

Monday, December 29, 1941—Afternoon Session
1:30 O'Clock P. M.

(Mr. Goldstein concluded his argument to the jury on behalf of the defendants.)

(Mr. Scott made a closing argument to the jury on behalf of the plaintiff.)

CHARGE OF THE COURT

The Court: Ladies and gentlemen of the jury, if I may now have your attention I will instruct you as to the law of the case, in the light of which you will determine what your verdict shall be.

This action was commenced by the General Accident Fire and Life Assurance Corporation, Ltd., for declaratory relief and to declare a certain automobile contract for liability insurance cancelled and of no force and effect, and for an injunction restraining the defendants, Charles Gromer Dickinson, Doris May Dickinson, and William Kemp, from taking any steps or proceedings in the State Courts as against said plaintiff company under said policy of insurance. The insurance policy in question was issued to the Defendant L. K. Fevera,

doing business under the firm name and style of "Fevera Chevrolet Company" at Lincoln, Placer County, California, and was dated December 6, 1939, to be in full force and effect from December 16, 1939, to December 16, 1940. The plaintiff company claims and alleges that Defendant L. K. Fereva had an accident which occurred in Placer County, California, on the 25th day of February, 1940, but that he failed to make any report of such accident to the company until on or about April 26, 1940, and for that reason the policy issued to him for public liability is of no force and effect and should be cancelled, res- [221] cinded and declared null and void insofar as the accident is concerned involving the Defendants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, and William Kemp.

The Defendant L. K. Fereva has denied the claims of the company that he failed to give notice of the accident as claimed by them and on the contrary has set up in his answer that he did give such notice within fifteen days from the date of the accident. The Defendants William Kemp, Charles Gromer Dickinson and Doris May Dickinson, by their answer, also deny the claims of the company that the Defendant L. K. Fereva, failed to give notice of the accident as claimed by them. And these defendants also assert in their answer that the Defendant L. K. Fereva, notified the plaintiff company of said accident within 15 days time thereafter. And as a cross-claim Defendants Charles Gromer Dickinson and Doris May Dickin-

son have set up their complaint against the said General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, alleging that on the 7th day of December, 1940, they obtained a judgment in the Superior Court of the State of California, in and for the County of Placer, against said L. K. Fereva, doing business under the firm name and style of "Fereva Chevrolet Company," for the sum of Five Thousand Dollars and costs in the sum of Two Hundred Sixteen and 65/100 Dollars, no part of which has been paid and all of which is due, with interest thereon at the rate of seven per cent per annum from said 7th day of December, 1940; and said defendants further allege that at the time of the rendition of said judgment said Defendant L. K. Fereva carried a liability insurance policy with the plaintiff company and that by the terms thereof said company was obligated to pay to said defendants, Charles Gromer Dickinson and Doris May Dickinson, the whole of said sum of Five Thousand Two Hundred Six-[222] teen and 65/100 Dollars, with interest thereon at the rate of seven per cent per annum from the 7th day of December, 1940; the Defendant William Kemp, admits that he is the plaintiff in a personal injury action pending in the Superior Court of the State of California, in and for the County of Butte, as alleged in plaintiff's complaint. And in addition thereto an affirmative defense against plaintiff is set up by the defendants Charles Gromer Dickinson and Doris May Dickinson and William Kemp to the effect that plaintiff waived the pro-

vision contained in condition 7 of the insurance contract in question requiring that written notice of the occurrence of the accident be given by the insured, L. K. Fereva, to the corporation as soon as practicable and it is claimed by said defendants that as far as these defendants are concerned all of the provisions of said condition 7 of the insurance contract in question, relative to the giving of a written notice of the accident under the terms of the policy were duly waived by said plaintiff corporation, and that said plaintiff corporation is now, as far as defendants Charles Gromer Dickinson, Doris May Dickinson and William Kemp are concerned, estopped from claiming that no proper notice of the accident relative to said contract of indemnity insurance and that no proper compliance with the terms and provisions of said condition No. 7. of said contract of insurance was made by the insured, L. K. Fereva, and hence that said plaintiff corporation is liable to said defendants on said insurance contract.

It is solely within your province to judge the effect and value of the evidence addressed to you. You are, however, not to judge the effect of the evidence arbitrarily, but you are to be guided by the instructions of the court in weighing the evidence and in determining the facts to be drawn from the evidence; [223] and in considering your verdict, you will apply the law as the Court gives it to you to the facts as you find them. You are not bound to decide in conformity with the declarations of any number of witnesses, which do not

produce conviction in your minds, against a less number or against a presumption or other evidence satisfying your minds. A witness is presumed to speak the truth. The presumption, however, may be repelled by the manner in which he or she testified, by the character of his or her testimony or by his or her motives, or by contradictory evidence. Where a witness has testified wilfully false in one particular, not through honest mistake, but with intent to deceive, you are to treat all of his or her testimony with distrust, and you may reject it all unless you believe that in other particulars he or she has spoken the truth. You are the exclusive judges of the credibility of witnesses.

This case presents several questions or propositions of law, and it is the duty of the Court to instruct you fully upon each proposition. Some propositions may require several instructions. You must not allow yourselves to be influenced, however, as to any question of law or fact by the number of instructions given you upon such question. The Court does not intend to stress the relative importance of any question of fact or law either by the number of instructions given upon a particular proposition, or by the order in which the instructions are given. In arriving at your verdict in this case you must not single out any one instruction or any particular group of instructions; you must consider all of the instructions together. You must not assume the existence of any law not stated in these instructions, nor speculate or question as to what the law is. If during

your deliberations doubt should arise in your minds as to what the law is upon any [224] given question you should so advise the Court, and the Court will then again read the instructions covering the question or questions as to which you may be in doubt.

It is provided in condition No. 7 of the policy of insurance issued by the plaintiff herein, with reference to notice of accident, claim or suit, that upon the occurrence of an accident written notice shall be given by or on behalf of the insured to the corporation or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.

You are instructed that such notice will be deemed to have been given in conformity with the requirement in the said condition, that the same be given as soon as practicable, if the notice is actually given within twenty days from the happening of the casualty.

By the terms of section 551 of the Insurance Code of the State of California it is provided as follows: "Except in the case of life, marine, or fire insurance, notice of an accident, injury, or death may be given at any time within twenty days after the event, to the insurer under a policy against loss therefrom. In such a policy, no requirement of notice within a lesser period shall be valid."

Where notice of an accident is required to be made as soon as practicable after the happening thereof, notice given to the plaintiff sixty days thereafter is as a matter of law insufficient.

Persons injured in an automobile accident are bound by the limitations contained in the policy of insurance issued to the [225] insured, and a breach of a condition of the policy for the giving of written notice as soon as practicable after the occurrence of the accident committed by the insured person or persons against the insurance carrier, provided, however, that the carrier has not waived said provision in the policy and is not estopped to assert the same.

The principle of estoppel may be defined as follows:— Where a person tacitly encourages an act to be done he cannot afterward exercise his legal right in opposition to such consent, if his conduct or acts of encouragement induce the party to change his position, so that he will be peculiarly prejudiced by the assertion of such adversary claim. The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted.

“Waiver” is defined to be the intentional relinquishment of a known right. Waiver may be either express or implied. Conduct on the part of plaintiff insurance company which will warrant the inference that it intended to waive a provision of

the policy, and which deceived the insured so as to prevent his fulfillment of the terms of the contract may amount to a waiver.

You are instructed that an insurance company like any other principal acting through agents may limit their powers, and that this was done by the plaintiff in the policy of insurance issued by it to Mr. Fereva. The provision to which reference is made is as follows: "No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the cor- [226] poration from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by indorsement issued to form a part hereof, signed by the United States Manager." When the defendant Fereva accepted the policy it became the contract between him and the plaintiff company, and he was charged with knowledge of its terms, among others the limitations upon the power of the agents of the plaintiff company. However, this provision, like any provision of the policy, may be waived or the plaintiff company may be estopped to assert it. It is a question of fact for you to determine from the evidence and under the instructions of the Court, whether this provision has in fact been waived by the plaintiff company, or whether plaintiff company is estopped to assert it.

A local agent who is clothed with the general power to solicit and consummate contracts of insurance within a certain territory stands in the

stead of the company, and represents its whole power to give validity to the contracts which he is authorized to execute and deliver, and to waive conditions precedent to liability by oral agreement, including the condition as to the mode of waiver of such conditions precedent.

General agents authorized to issue and deliver policies are regarded as having the same power to waive conditions in policies as the company themselves, and can therefore waive conditions and forfeitures.

As a general rule the powers of an agent of an insurance company are governed by the general laws of agency. His powers are varied by the character of the functions he is employed to perform. He may be a general agent with general powers, or his powers may be limited by the company; or he may be a special agent with authority limited to a specific transaction. In any event, [227] an insurance agent, whether general or special, possesses such powers as have been conferred by the company, or as third persons have a right to assume that he possesses in the circumstances of the case; and as a general rule his powers, as to those dealing with him, are determined by the nature of the business entrusted to him and are *prima facie* coextensive with its requirements.

An insurance company, like any other principal, may limit the powers of its agents. Where this is done by clear and plain terms in the policy and the applicant accepts the policy, it becomes the contract between him and the company and he is

charged with knowledge of its terms, among others, the limitations upon the power of the agent of the company. The authority of an agent to effect a waiver in the face of a limitation denying his power to waive warranties or conditions is not vested in every agent who may represent the company. Unless such authority be given to some particular agent to do so, then, as a general rule, it is only agents of the company who are empowered to issue and deliver policies who may be regraded as having the power to waive conditions and forfeitures. As to the character of agents authorized to waive such conditions, the rule includes all persons empowered to conclude contracts of insurance without first referring the negotiations to their principals, such as those which have full power to effect contracts of insurance, to fix rates of premiums, to consent to changes, to make indorsements and to cancel policies.

Notice to an agent who is under no duty to transmit the information to his principal, or to any other agent, and who has no connection with the transaction to which the notice relates, is not notice to the principal.

The rule that notice to an agent is notice to his principal is [228] not applicable unless the notice has reference to business in which the agent is engaged under authority from the principal, and is pertinent to matters coming within that authority; and hence a principal is not affected with knowledge which the agent acquires while not acting in the scope of his employment or which re-

lates to matters not within the scope of his authority unless the agent actually communicates his information to the principal.

The rule that notice to an agent is notice to the principal has no application with reference to the knowledge of an agent who deals for himself with the principal; and in this case the knowledge of Mr. Fereva obtained by him at the time the automobile accident occurred is not imputed to the General Accident Fire and Life Assurance Corporation.

If you find from the evidence that the plaintiff, General Accident Fire and Life Assurance Corporation, promptly on receipt of summons and complaint from its assured L. K. Fereva did accept the same and agreed to handle the defense under a full reservation of all of its rights under its policy of insurance because of the failure of said Fereva to report the accident promptly and in accordance with policy provisions, and with the further stipulation that any action taken in the handling, investigation or defense of said action was not to be construed as a waiver of said rights, and that the said L. K. Fereva expressly or impliedly agreed to the same and consented to the defense of said action by the said plaintiff under said stipulation, then the said plaintiff did not waive its right to assert in the present case its claim of the failure, if any, of said Fereva to give proper notice of the said accident.

The statutes of the State of California require that policies of liability insurance contain a provi-

sion giving to an injured [229] person who has secured a judgment against the insured the right to bring an action against the Insurance Company "on the policy and subject to its terms and limitations." The effect of this statute is to give to an injured claimant a cause of action against an insurer for the same relief that would be due to an insured seeking indemnity and reimbursement after the judgment had been satisfied by him. The cause of action is no less, but also it is no greater; assured and claimant both are bound by the conditions of the insurance contract.

You are further instructed that under condition 7 of the policy of insurance in question it was provided that written notice should be given by or on behalf of the insured to the corporation or any of its authorized agents as soon as practicable upon the occurrence of the accident. In this case defendants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, and William Kemp have set up an affirmative defense against plaintiff company to the effect that said plaintiff company waived the provision contained in said provision 7 of the insurance contract in question and that further, said plaintiff insurance company is estopped from claiming or asserting that no written or other proper notice of the accident in question was given to it by the insured L. K. Fereva. It is admitted without contradiction that the policy of insurance in question was in force on February 25, 1940. Accordingly, the main question presented under the special defense of defendants the Dickin-

sous and Kemp is whether there was a waiver of the giving of written notice by L. K. Fereva and whether the plaintiff is estopped from setting up the claim as against said defendants, that no proper notice of the accident was given plaintiff by Fereva. If you find from the evidence herein that within a period of [230] twenty days after the happening of the accident, the insured L. K. Fereva gave oral notice to Wentz and Erlin, the general agents and attorneys in fact of plaintiff company through one R. F. Urquhart, their agent in Sacramento, and that for many years prior thereto said L. K. Fereva was an agent of said plaintiff corporation and in the event of any report of an accident it was the practice and custom on his part, with the consent and approval of said Wentz and Erlin and said R. F. Urquhart to give notice orally of any accident on all policies of insurance issued to, or written by, or through said L. K. Fereva and thereupon the same was duly recognized by plaintiff as a sufficient notice and compliance with the terms of the indemnity policies of insurance requiring written notice of an accident to be given by the insured, and that the same became and was the accepted mode, system and custom of giving notice of claims or of accidents, or of any loss as between said plaintiff corporation and said L. K. Fereva on any policies of insurance issued to, or written by or through him; and if you further find that for a period of many years prior to the 25th day of February, 1940 and thereafter up to and including the 1st day of July, 1941, said plaintiff

corporation allowed and permitted said R. F. Urquhart, district representative of Wentz and Erlin, and said Wentz and Erlin themselves permitted and allowed said R. F. Urquhart to hold himself out to said defendant L. K. Fereva as the person to whom such oral notice of any accident or any indemnity policy issued to said L. K. Fereva, or others by and through him should be given, and that said condition continued and was consistently followed by said L. K. Fereva in the place and stead of giving written notice, and that said L. K. Fereva always gave notice orally in the same manner as he did in the instant [231] accident under condition 7 of said policy; and if you further find that said L. K. Fereva relied upon the actions and conduct of said plaintiff company relative to said notice and the manner and form in which he had been in the habit of giving the same, then I instruct you that such conduct on the part of the plaintiff insurance company warrants the inference that it intended to and waived the provision of the policy as to written notice under condition 7 and warrants the inference that said plaintiff corporation is now estopped from claiming any benefit by or through the provisions pertaining to written notice of accident referred to in said condition 7 of said contract of indemnity insurance, and is estopped from setting the same up as a defense to the action as far as the defendants are concerned, and your verdict in the event you find such waiver or estoppel should be in favor of the defendants and against the plaintiff herein. On the other hand, unless you find such

a waiver or such an estoppel, it is your duty to return a verdict in favor of the plaintiff.

You are instructed that in this case under condition No. 7, of the policy issued by the plaintiff to L. K. Fereva, the duty rested upon Mr. Fereva, the defendant, as an insured, under the policy, to give written notice of the happening of the accident to the plaintiff as soon as practicable after the occurrence thereof, and if you find from the evidence that he did not give such written notice until sixty days after the occurrence, and if you further find from the evidence and under the instructions of the Court that there was no waiver of the above mentioned condition of the policy and also that plaintiff is not estopped to assert said condition of the policy, then your verdict herein must be in favor of the plaintiff and against the defendants and cross-complainants. [232]

When you retire to your jury room to deliberate upon your verdict, you will select one of your number as foreman and he will sign your verdict for you, whereupon you will return into court with the same. Your foreman will represent you as your spokesman in the further conduct of this case in this court.

Any exceptions?

Mr. Scott: I would like, if your Honor please, to note an exception to the refusal to give plaintiff's requested instructions 2 to 7.

I assume that they might have been refused as argumentative, but I wish to note an exception for the sake of the record.

I would also like to note an exception to instruction 21, the very long one which your Honor just read, on the ground that in this case Fereva's answer does not set up estoppel or waiver, and there is nothing in the nature of the case that can show an estoppel, and in the absence of that defense by Fereva in this case that instruction is, in my judgment, rather confusing and has a tendency to mislead.

Mr. Goldstein: If your Honor pleases, the defendants are content with the instructions. We have no exceptions, but I want to call your Honor's attention to the misreading of one word in Plaintiff's Instruction No. 11, on page 2. Your Honor misread just one word and I didn't want the record—on page 2 of Plaintiff's Instruction No. 11. Your Honor said, "to hold himself out to said defendant L. K. Fereva as the person to whom such oral notice of any accident or any indemnity policy"—the word there is "on any indemnity policy." I think the record shows your Honor said "or".

The Court: What line is that?

Mr. Goldstein: It isn't numbered. It is right in the [233] center of the page. It starts with the word "accident."

The Court: "Notice of any accident"?

Mr. Goldstein: Yes. Your Honor said "or any indemnity policy issued." It should be "on any indemnity policy issued to said L. K. Fereva." I put the word "on" here; your Honor said "or." The conjunction is not correct there. "Of any accident on any indemnity policy."

The Court: Let me see your copy.

Mr. Scott: It is 21, your Honor, the one that I was discussing.

Mr. Goldstein: Court's instruction 21.

The Court: You say I used the word "or"?

Mr. Goldstein: "Or" instead of "on."

The Court: It is written like "or", but it is true it is "on." Do you wish me to re-read it?

Mr. Goldstein: Your Honor, I believe perhaps it would be in order, in view of the fact there was one other place also I would like to call your Honor's attention to in that.

The Court: I will read the paragraph.

Mr. Goldstein: Yes.

The Court: I will re-read the paragraph in which this mistake was made.

If you find from the evidence herein that within a period of twenty days after the happening of the accident, the insured L. K. Fereva gave oral notice to Wentz and Erlin, the general agents and attorneys in fact of plaintiff company through one R. F. Urquhart, their agent in Sacramento, and that for many years prior thereto said L. K. Fereva was an agent of said plaintiff corporation, and in the event of any report of an accident it was the practice and custom on his part, with the [234] consent and approval of said Wentz and Erlin and said R. F. Urquhart, to give notice orally of any accident on all policies of insurance issued to or written by, or through said L. K. Fereva and that thereupon the same was duly recognized by plaintiff as a sufficient notice and compliance with the

terms of the indemnity policies of insurance requiring written notice of an accident to be given by the insured, and that the same became and was the accepted mode, system and custom of giving notice of claims or of accidents, or of any loss as between said plaintiff corporation and said L. K. Fereva on any policies of insurance issued to, or written by or through him; and if you further find that for a period of many years prior to the 25th day of February, 1940 and thereafter up to and including the 1st day of July, 1940, said plaintiff corporation allowed and permitted said R. F. Urquhart, district representative of Wentz and Erlin, and said Wentz and Erlin themselves permitted and allowed said R. F. Urquhart to hold himself out to said defendant L. K. Fereva as the person to whom such oral notice of any accident on any indemnity policy issued to said L. K. Fereva, or others by and through him should be given, and that said condition"——

Do you want me to read further than that?

Mr. Goldstein: No.

The Court: Now do you wish to note any exception?

Mr. Goldstein: I have no exception.

The Court: We have prepared for your convenience——

Mr. Scott: Pardon me, your Honor. Might I respectfully call attention to the next line in that instruction, which would be your Honor's page 22?

The Court: 22. [235]

Mr. Scott: Yes. As I recall from our conference—Your Honor will note that right after what you read in line 22 and line 23 this instruction goes on, “as he did in the instant accident.” Should it not be, “as he claimed that he did,” or “as is claimed that he did”?

The Court: I will insert the words “he claimed,” making it read “as he claimed he did.”

Mr. Scott: Yes. In other words, not making it an assumption of fact.

Mr. Goldstein: Your Honor, may I respectfully ask your Honor to read the balance of that instruction so as to get the continuity from the point where Mr. Scott called your attention to this?

The Court: Yes, I will insert the words “he claimed,” in there, “as he claimed he did.”

The Court: Now, ladies and gentlemen of the jury, we have prepared for your convenience three forms of verdicts, which I shall read to you: After the title of court and cause, “Verdict. We, the jury in the above entitled case, find for the plaintiff General Accident Fire and Life Assurance Corporation, Ltd., a corporation, and against the defendants Charles Gromer Dickinson and Doris May Dickinson, William Kemp, and L. K. Fereva, individually and doing business under the firm name and style of Fereva Chevrolet Company. Dated December 29, 1941,” and a line for the signature of the foreman.

The other verdict reads, after title of court and cause, “We, the jury in the above entitled action, find in favor of the defendants William Kemp, and L. K. Fereva, individually and doing business under

the firm name and style of Fereva [236] Chevrolet Company. Dated December 29, 1941." And a blank line and underneath that the word "Foreman."

The third verdict prepared for your convenience after the title of court and cause reads as follows: "We, the jury in the above entitled action, find in favor of the defendants Charles Gromer Dickinson and Doris May Dickinson and against the plaintiff General Accident Health and Life Assurance Corporation, Ltd., a corporation, and on the cross-complaint of said defendants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, we find in their favor and against the plaintiff and cross-defendants General Accident Health and Fire Assurance Corporation, Ltd., of Perth, Scotland, a corporation, in the sum of \$5,261.65, with interest thereon at the rate of 7 per cent. per annum from December 7, 1940, until paid. Dated December 29, 1941," and a line for signature under which is "Foreman."

I just read these for your convenience to acquaint you with the nature of them and for no other purpose.

You may retire now and deliberate upon your verdict.

(The jury retired at 2:55 o'clock p. m. to deliberate upon their verdict, and returned into court with their verdict at 4:15 o'clock p. m.)

[Endorsed]: Filed June 26, 1943. [237]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HAD UPON HEARING OF PROPOSED
AMENDMENTS AND OBJECTIONS TO
PROPOSED FINDINGS AND JUDGMENT.

Before Hon. Martin I. Welsh, Judge.

Counsel:

For Plaintiff Corporation:

J. WALTER SCOTT, ESQ.,
Standard Oil Building,
San Francisco, California.

For Defendant Dickinson:

J. OSCAR GOLDSTEIN, ESQ.,
Chico, California.

Monday, March 2, A. D. 1942

The matter of hearing on proposed amendments to proposed findings and judgment herein, came on regularly on this day, at 2:30 o'clock P.M. The plaintiff corporation was represented by J. Walter Scott, Esq., its counsel, and the defendant Dickinson, with others, was represented by J. Oscar Goldstein, Esq.,

Upon the calling of the matter, the following proceedings were had:

The Court: General Accident vs. Dickson.

Mr. Scott: Ready.

Mr. Goldstein: If your Honor please, on the seventh of January, this year, there was served on

counsel for the plaintiff the proposed findings and judgment—findings of fact and conclusions of law, and the judgment, which are now in the possession of your Honor, and some weeks later, we were served with copies of amendments—so-called proposed amendments and objections to the findings. Thereafter I assume the court took them up in the regular way and this day has been fixed for oral argument or hearing upon questions on the proposed findings, and I desire now formally to ask the court to sign and file the findings which were prepared in behalf of the defendant. In order, perhaps, to save time, I don't know what your Honor has in mind or——

The Court: I have this in mind, Mr. Goldstein: The court is not at all satisfied with the sufficiency of notice extended to the insurance company, I have my doubts about it, that feature of your case, and I would like to hear you in regard to that.

(Argument follows.)

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

[Seal]

C. W. CALBREATH,

Clerk, District Court of the
U. S. Northern District of
California.

By F. M. LAMPERT

Deputy Clerk.

[Endorsed]: Filed Oct. 14, 1943. Paul P. O'Brien, Clerk.

[Endorsed]: No. 10501. United States Circuit Court of Appeals for the Ninth Circuit. Charles Gromer Dickinson and Doris May Dickinson, His Wife; William Kemp; and L. K. Fereva, Individually and doing business under the firm name and style of "Fereva Chevrolet Company", Appellants, vs. General Accident Fire and Life Assurance Corporation, Ltd., Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed July 24, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 10501

GENERAL ACCIDENT FIRE AND LIFE AS-
SURANCE CORPORATION, LTD., a cor-
poration,

Plaintiff,

vs.

CHARLES GROMER DICKINSON, DORIS
MAY DICKINSON, WILLIAM KEMP and
L. K. FERREVA, individually and doing busi-
ness under the firm name and style of "FER-
REVA CHEVROLET COMPANY",

Defendants.

CHARLES GROMER DICKINSON and DORIS
MAY DICKINSON, husband and wife,

Cross-claimants,

vs.

GENERAL ACCIDENT FIRE AND LIFE AS-
SURANCE CORPORATION., of PERTH,
SCOTLAND, a corporation,

Cross-defendant.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF PARTS OF RECORD
NECESSARY FOR THE CONSIDERA-
TION THEREOF

(Rule 19)

Come now the appellants on the above entitled

appeal and present their statement of points on appeal, and designate the portions of the record they consider necessary for the consideration thereof, to wit:

I.

That the evidence affirmatively established and is conclusive that the plaintiff is liable under all of the terms and conditions as set forth in the policy of automobile insurance by reason of the accident which occurred on February 25, 1940.

II.

That the evidence was and is undisputed in favor of the defendants and cross-claimants that the insured defendant, L. K. Fereva, doing business as "Fereva Chevrolet Company", duly and fully complied with all the terms, covenants, and conditions of the policy of indemnity insurance set out in plaintiff's complaint marked "Exhibit A", and that said defendants and cross-claimants, Charles Gromer Dickinson and Doris May Dickinson, husband and wife, under condition 9 of said policy of insurance, are entitled to recover the full amount due them under the judgment obtained in the Superior Court of the State of California, in and for the County of Placer.

III.

That it affirmatively appears from the evidence that the insured, L. K. Fereva, doing business as Fereva Chevrolet Company, duly informed the plaintiff and cross-defendant of the accident within ten days after the occurrence of the accident and

that no prejudice of any kind resulted to said plaintiff and cross-defendant company in any respect whatsoever.

IV.

That the evidence on the case as a whole is insufficient as a matter of law to justify the decision and judgement of the court.

V.

That the evidence is conclusive that plaintiff and cross-defendant company was not relieved of liability by the failuer of the insured to comply with Condition 7 of the policy requiring immediate written notice of the accident with said company, because all of the provisions of said condition 7 of the policy of insurance in question were duly waived by said plaintiff and cross-defendant company.

VI.

That it affirmatively appears and the evidence is conclusive that defendant L. K. Fereva gave due notice of the accident within ten (10) days after the 25th day of February, 1940, orally to R. F. Urquhart, district representative of plaintiff and cross-defendant company, which had been set up and considered the general practice, mode and custom of the plaintiff company in giving notice to said company of any accident or loss by said defendant L. K. Fereva for himself and others, thereby waiving the provisions contained in condition 7 of the insurance contract in question, and said plaintiff and cross-defendant was hence estopped

from setting up the provisions of condition 7 as a defense to the rights of defendants and cross-claimants under said contract of indemnity insurance.

VII.

That while it is the established law that the failure of the assured to comply with the condition of the policy, requiring immediate written notice of the accident under certain conditions, relieves the plaintiff company from liability on the judgment, nevertheless in the instant case the evidence is undisputed that the company waived said provisions relative to written notice, and further, that no prejudice resulted to plaintiff company from the failure of the assured to give such immediate written notice as provided by condition 7, and that said assured L. K. Fereva cooperated with plaintiff company in every way to defeat the action filed against him in the lower court by the Dickinsons and fully and completely made a substantial compliance with the terms and conditions of his policy of indemnity insurance.

VIII.

That it affirmatively appears that defendants and cross-claimants were entitled as a matter of law to a jury trial of the issues involved in the action filed by plaintiff and cross-defendant; that the verdict of the jury finding in favor of defendants and cross-claimants and against the plaintiff company was determinative of all issues involved in the action thus filed by plaintiff and cross-defendant;

that said jury found in favor of said Dickinsons and against plaintiff company in the sum of Five Thousand Two Hundred Sixteen Dollars and Sixty-five Cents (\$5,216.65), with interest, and that such judgment in their behalf should have been entered by the Clerk of the Court forthwith, together with judgment in favor of the other defendants as found by the jury's verdict; that the findings and judgment as made and entered by the Court are contrary to the verdict of the jury and have no substantial basis in fact or law.

IX.

That it affirmatively appears that defendant L. K. Fereva was the general agent of the plaintiff company, and that all his actions and conduct relative to giving notice of accidents were fully known, approved, and acquiesced in by plaintiff company in connection with giving notice of loss in any accident in which he had any interest, and hence the plaintiff company was and is bound by his actions and conduct, and at least as to the defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife, the verdict of the jury must be sustained and they are entitled to recover as against said plaintiff and cross-defendant the full amount of their claim due from defendant L. K. Fereva.

X.

The court erred in ignoring and setting aside the verdict of the jury in favor of defendants and

cross-claimants and entering judgment in favor of plaintiff.

Appellants designate the following portions of the record as necessary for the consideration of said points on appeal:

1. Complaint for declaratory relief, etc., omitting and excluding therefrom the exhibits A, B, and C. Omit title of court and cause.

2. Answer and cross claim of defendants, Charles Gromer Dickinson, Doris May Dickinson, and William Kemp. Omit title of court and cause.

3. Answer of defendant, L. K. Fereva, individually and doing business under the firm name and style of "Fereva Chevrolet Company." Omit title of court and cause.

4. Answer of plaintiff to cross claim of defendants, Charles Gromer Dickinson, and Doris May Dickinson. Omit title of cause and cause.

5. Amendment to answer of defendants, Charles Gromer Dickinson and Doris May Dickinson and William Kemp. Omit title of court and cause.

6. Verdict of jury as to defendants, Charles Gromer Dickinson and Doris May Dickinson. Omit title of court and cause.

7. Verdict of jury as to defendant, William Kemp and L. K. Fereva, individually and doing business under the firm name and style of "Fereva Chevrolet Company." Omit title of court and cause.

8. Findings and conclusions of law signed by the court in favor of plaintiff. Omit title of court and cause.

9. Judgment and decree made and entered in favor of plaintiff. Omit title of court and cause.

10. Notice of intention of plaintiff to move for a new trial. Omit title of court and cause.

11. Notice of entry of judgment and decree. Omit title of court and cause.

12. Petition and motion of defendants and cross-claimants for new trial. Omit title of court and cause.

13. Notice of Clerk of denial of motion for new trial. Omit title of court and cause.

14. Notice of appeal and designation of matters to be included in record on appeal. Omit title of court and cause.

15. Order transferring original exhibits and reporter's transcript to clerk of the Circuit Court of Appeals. Omit title of court and cause.

16. Appellants designation of contents of record on appeal. Omit title of court and cause.

17. Cost bond on appeal. Omit title of court and cause.

18. Certificate of clerk of District Court to transcript on appeal. Omit title of court and cause.

All of the foregoing documents refer to the clerk's transcript on appeal as filed with the Clerk of the Circuit Court of Appeals.

19. The following proceedings and testimony taken on the trial of the case commencing December 22, 1941 as follows: All of the proceedings and testimony commencing with line 1 on page 2 of the reporter's transcript and ending with line

7, page 221, excluding the following parts and portions thereof, viz.:

- (a) Omit lines 1 to 8 inclusive, p. 12.
- (b) Omit lines 1, p. 29 to line 12 inclusive, p. 30.
- (c) Omit from line 22, p. 53 to line 6 inclusive on p. 55.
- (d) Omit from line 8, p. 110 to line 15 inclusive, p. 112.
- (e) Omit line 3, p. 131 to line 10 inclusive, p. 131.
- (f) Omit line 7, p. 152 to line 4 inclusive, p. 153.
- (g) Omit line 1, p. 169 to line 8 inclusive, p. 169.
- (h) Omit line 5, p. 173 to line 16 inclusive, p. 173.
- (i) Omit line 1, p. 174 to line 5, p. 174.
- (j) Omit line 11, p. 190 to line 23, p. 190.
- (k) Omit line 5, p. 195 to line 7 inclusive, p. 195.
- (l) Omit line 7, p. 197 to line 17 inclusive, p. 197.
- (m) Omit line 26, p. 202 to line 5 inclusive, p. 203.
- (n) Omit line 30, p. 216 to line 10 inclusive, p. 217.
- (o) From reporter's transcript insert from line 17, page 236 to line 22, page 237.

20. It is not necessary to print any of the exhibits of plaintiff or defendants which were offered in evidence which I referred to in reporter's trans-

cript, as all of the said original exhibits are to be used on consideration of this appeal without reproduction in the record. All of said exhibits have already been transmitted to the clerk of the Circuit Court of Appeals by order of the District Court.

21. Order extending time to file statement of points and designation of record in Circuit Court of Appeals. Omit title of court and cause.

22. Statement of points and designation of record, under Rule 19.

The foregoing statement of points on appeal, and designation of the parts of the record which appellants deem to be necessary for the consideration of said appeal is respectfully presented and filed in compliance with Rule 19, subdivision 6 of the rules of the United States Circuit Court of Appeals.

Dated August 9, 1943.

J. OSCAR GOLDSTEIN and
BURTON J. GOLDSTEIN,
ESQS.,

Chico, California, Attorneys for defendants and cross-claimants Charles Gromer Dickinson and Doris May Dickinson, husband and wife.

MILTON M. HOGLE, ESQ.,

Willows, California, Attorney for L. K. Fereva, individually and dba "Fereva Chevrolet Company", defendant.

ERLING S. NORBY, ESQ.,
Marysville, and
J. OSCAR GOLDSTEIN, ESQ.,
Chico, California, Attorneys for defendant Wil-
liam Kemp.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Aug. 10, 1943. Paul P.
O'Brien, Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10501

CHARLES GROMER DICKINSON, et al,
Appellants

vs.

GENERAL ACCIDENT FIRE AND LIFE AS-
SURANCE CORPORATION, LTD., a cor-
poration

Appellee

NOTICE OF MOTION TO DISPENSE WITH
PRINTING OF EXHIBITS AND THE USE
OF ORIGINAL EXHIBITS BY THE
COURT.

To General Accident Fire and Life Assurance Cor-
poration, Ltd., a Corporation, Appellee

You and Each of You Will Please Take Notice
that the appellants in the above-entitled Court and
Cause will move the above Honorable Court, at its

Courtroom in the Circuit Court of Appeals for the Ninth Circuit, in the Post Office Building, San Francisco, California, on Monday, August 30th, 1943, at the hour of 10:00 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, to grant permission to appellants to dispense with the printing or reproducing of all of the exhibits or portions thereof, which were offered and received in evidence on the trial of the above entitled case in the District Court of the United States, in and for the Northern District of California, and to grant appellants permission to have all of said original exhibits certified to the Court by the Clerk so that they may be used and referred to in the briefs of respective counsel and upon the oral argument of the Cause and for all other purposes.

This motion will be made and based upon the Affidavit of J. Oscar Goldstein, Esq., one of the attorneys for appellants herein, and also upon the pleadings, proceedings, records, and documents now on file in the above-entitled Court and Cause pertaining to the above-entitled action and, if necessary, upon oral evidence to be introduced before the Court upon the hearing of this motion.

Dated: Chico, California, August 10, 1943.

J. OSCAR GOLDSTEIN

J. Oscar Goldstein and Burton J. Goldstein, Esqs.,
Chico, California, Attorneys for Appellants,
Charles Gromer Dickinson and Doris May
Dickinson, husband and wife;

Milton M. Hogle, Esq., Willows, California, attorney for L. K. Fereva, individually and dba "Fereva Chevrolet Company", Appellant;

Erling S. Norby, Esq., Marysville, and J. Oscar Goldstein, Esq., Chico, California, attorneys for Appellant William Kemp.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 10501

CHARLES GROMER DICKINSON, et al,
Appellants,

vs.

GENERAL ACCIDENT FIRE AND LIFE AS-
SURANCE CORPORATION, LTD, a cor-
poration

Appellee

AFFIDAVIT OF J. OSCAR GOLDSTEIN TO
DISPENSE WITH PRINTING OF EX-
HIBITS.

State of California
County of Butte—ss.

J. Oscar Goldstein, being first duly sworn, de-
poses and says:

That he is one of the attorneys for appellants
above named; that during the trial of said cause, he
acted as chief counsel for all of the appellants and

is therefore most familiar with the record of the trial and exhibits introduced in the case.

That the trial in the District Court consumed four days and appellants offered in evidence seventeen (17) exhibits and appellees, about six (6); that a number of said exhibits consisted of insurance policies with fine print, and only the small pasters thereon are necessary for consideration on the appeal; that moreover, the most important exhibits, which were necessary for use in the trial and are necessary for consideration in this appeal, were read into the record and will be printed as part of the record according to the request filed by appellants with the Clerk of the Circuit Court of Appeals; that to reproduce all of said exhibits or to print the same as part of the record would involve a needless large cost and expense to appellants, and appellants are in no position financially to bear the burden of such costs; that appellants are in bad financial circumstances and it will be impossible to carry their appeal forward and to present the same to this honorable court if the added burden of reproducing and printing said exhibits be placed upon them.

Affiant further alleges that heretofore by order duly made and entered on July 28, 1943, all of the original exhibits were transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, where they are at present, and all of said original exhibits are available for use by any of the parties to this appeal and by the court upon the final hearing and disposition of the appeal.

That in the interests of justice, it is necessary and advisable that the motion as made be granted and thus afford appellants an opportunity to present the pending appeal to the above honorable court.

J. OSCAR GOLDSTEIN

Subscribed and sworn to before me this 10th day of August, 1943

(Seal) DUNCAN C. McCALLUM

Notary Public in and for the County of Butte, State of California.

So Ordered:

FRANCIS A. GARRECHT

Senior United States Circuit
Judge

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Aug. 11, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF ADDITIONAL PARTS OF
THE RECORD THAT APPELLEE THINKS
MATERIAL FOR THE CONSIDERATION
OF POINTS RAISED ON APPEAL HERE-
IN

Comes now General Accident Fire and Life Assurance Corporation, Ltd., a corporation, plaintiff and appellee, and within the time allowed by the rule of Court designates in writing additional parts

of the record which said plaintiff and appellee thinks material and necessary for consideration of the points raised on appeal herein, and requests that the same be printed as a part of the record:

1. Reporter's Transcript, from line 3, page 221, to and including line 15, page 236, embracing the charge to the jury.

2. Plaintiff's exhibit number 1, consisting of policy of insured numbered AG1556, attached to the complaint, as Exhibit "A".

3. Plaintiff's exhibit number 5.

4. Defendants' exhibit "H".

5. "Notice of Filing of Findings of Fact and Conclusions of Law and Judgment", filed January 8, 1942.

6. "Findings of Fact and Conclusions of Law", endorsed "Lodged January 8, 1942".

7. "Judgment and Decree", dated "this day of January, 1942".

8. "Amendments, Objections and Exceptions to Proposed Findings of Fact and Conclusions of Law Heretofore Submitted by Defendants", endorsed filed January 27, 1942.

9. Portion of "Reporter's Transcript of Proceedings Had Upon Hearing of Proposed Amendments and Objections to Proposed Findings and Judgment", on March 2, 1942, commencing at page 1 down to and including line 19 page 3 of said Reporter's Transcript, copy thereof being attached hereto.

With the foregoing exceptions plaintiff and appellee agrees that the exhibits not set out in words

and figures in the Reporter's Transcript as read into the record by counsel for the parties hereto may be omitted from the printed record, and may be filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, available for use by any of the parties to the appeal, and by the Court upon final hearing and disposition of the appeal.

This designation is respectfully presented and filed in compliance with Rule 19, Subdivision 6 of the Rules of the United States Circuit Court of Appeals.

Dated: August 19, 1943.

**MYRICK & DEERING AND
SCOTT**

JAMES WALTER SCOTT

Attorneys for Appellee.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Aug. 19, 1943. Paul P. O'Brien, Clerk.